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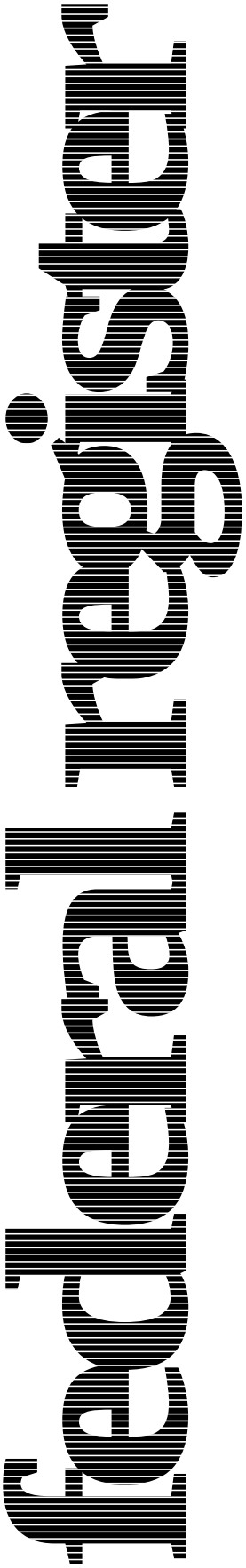

Thursday
March 2, 1995

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and Dallas, TX, see announcement on the inside cover of this issue.

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WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

(TWO BRIEFINGS)

WHEN: March 23 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

DALLAS, TX

WHEN: March 30 at 9:00 am

WHERE: Conference Room 7A23
Earle Cabell Federal Building and Courthouse
1100 Commerce Street
Dallas, TX 75242

RESERVATIONS: 1–800–366–2998

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

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6772 of February 27, 1995

American Red Cross Month, 1995

By The President of the United States of America

A Proclamation

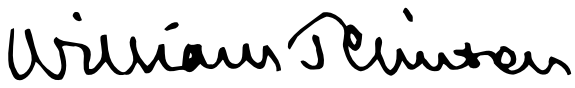
Every day, thousands of people in need look to the American Red Cross as a banner of hope. For disaster victims here and abroad, for service men and women seeking assistance, and for everyone depending on a safe and ready supply of blood—the Red Cross stands prepared to respond. But the scope of its service extends well beyond the provision of emergency care. Its broader mission is clear: to promote compassion, to foster a spirit of generosity, and to improve the human condition everywhere.

Since Clara Barton—''The Angel of the Battlefield''—founded the American Association of the Red Cross in 1881, its members have been called upon to serve in war and in peace. Today, with more than 1 million dedicated and experienced volunteers, the American Red Cross plays a vital role in bringing physical and emotional comfort to those who need it most. Whether they are responding to an emergency or addressing the daily necessities of the homeless and elderly, Red Cross workers have always been models of community spirit.

Dangers to the health and safety of our people have changed radically during the past hundred years, and the Red Cross has adapted to meet these needs. Its commitment to caring for others enables us to restore hope in the lives of injured citizens, and its example challenges us to revitalize the covenant of American citizenship. The long-term strength of our Nation depends upon our willingness to live out the ideals long embodied by the American Red Cross. To celebrate our past and to safeguard our future, I am proud to commend the countless individuals whose courage and selflessness have sustained this organization for more than a century.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 1995 as ''American Red Cross Month.'' I urge all Americans to show support for the more than 2,000 Red Cross chapters nationwide, and I challenge each of you to become active participants in advancing the noble mission of the Red Cross.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of February, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.



[FR Doc. 95–5256
Filed 2–28–95; 11:17 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 60, No. 41
Thursday, March 2, 1995

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–SW–12–AD; Amendment 39–9165; AD 95–04–13]

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Robinson Helicopter Company Model R44 helicopters, that currently requires revisions to the Limitations section, the Normal Procedures section, and the Emergency Procedures section of the R44 Rotorcraft Flight Manual, revised September 6, 1994. These revisions limit operations in high winds and turbulence; provide information about main rotor (M/R) stalls and mast bumping; and provide recommendations for avoiding these situations. Additionally, emergency procedures are provided for use should certain conditions be encountered. This amendment requires the same revisions required by the existing Priority Letter AD, but revises certain words and phrases to further clarify the revised Limitations and Normal Procedures sections, deletes the paragraph that referenced recording compliance with the AD, and adds another paragraph that states that no special flight permits will be issued prior to compliance with this AD. This amendment is prompted by two Model R44 accidents since April 1994 involving M/R blades contacting the helicopters' fuselage; and, 26 accidents involving M/R blades contacting the fuselage on the Model R22 helicopter since 1981. The Model R22 helicopter M/R system design is similar to the Model R44 helicopter M/R system design. The actions specified by this AD are intended to prevent M/R stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system and subsequent loss of control of the helicopter.

DATES: Effective March 17, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–12–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On January 12, 1995, the FAA issued Priority Letter AD 95–02–04, to require revisions to the Limitations section, the Normal Procedures section, and the Emergency Procedures section of the R44 Rotorcraft Flight Manual, revised September 6, 1994. These revisions limit operations in high winds, turbulence, and wind shear conditions; provide information about M/R stalls and mast bumping; and, provide recommendations for avoiding these situations. That action was prompted by two Model R44 accidents since April 1994 involving M/R blades contacting the helicopters' fuselage. M/R stall and mast bumping may have caused these M/R blade contacts with the fuselage. Both of these accidents resulted in fatalities. Limited pilot experience in rotorcraft has been identified as common to these accidents. High winds and turbulence were also noted in both of the accidents. Airspeed and low rotor RPM could also be influencing factors in these M/R blades contacting the fuselage. Flight in strong or gusty winds, areas of wind shear, or areas of moderate, severe, or extreme turbulence can degrade the helicopter handling qualities, thereby creating an unsafe condition. These conditions, if not compensated for, could result in M/R stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that the words ''areas of forecasted or reported'' should be deleted from the revision to the Limitations section of the Model R44 Rotorcraft Flight Manual, revised September 6, 1994. Some operators receive area forecasts and reports that cover wide geographic regions. These forecasts and reports can refer to turbulence in areas unrelated to the actual area of operation. Forecasted or reported wind shear or turbulence outside of the operational area was not intended to be a flight limitation. The word ''spreads'' was added to the term ''wind gusts'' to define this limitation as the spread or variance of wind velocities. The phrase ''but no lower than 60 knots'' was added to the Limitations section because of the possibility that at higher altitudes, 0.7 V_{ne} could be lower than 60 knots. Additionally, the phrase ''but no lower than 60 knots'' was added to recommendation (1) of the Normal Procedures section because of the possibility that at higher altitudes, 0.9 V_{ne} could be lower than 60 knots. Below 60 knots, the energy required to recover from a low-rotor RPM condition by flaring the helicopter and converting forward airspeed to rotor speed is unavailable. The reference to the requirement to report compliance that was contained in paragraph (b) of the existing Priority Letter AD has been deleted since part 91.147(a)(2)(v) already contains that requirement. Finally, another paragraph has been inserted to state that special flight permits will not be issued to operators for the purpose of obtaining and inserting the three pages into the rotorcraft flight manual. Due to the immediate compliance time and the criticality of preventing M/R blade contacts with the fuselage, this rule is being issued immediately to revise the operating limitation of the helicopter to a safer level.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Helicopter Company Model R44 helicopters of the same type design, this AD supersedes Priority Letter AD 95–02–04 to require the same revisions to the Limitations

section, the Normal Procedures section, and the Emergency Procedures section of the R44 Rotorcraft Flight Manual, revised September 6, 1994, that were required by the Priority Letter AD, but deletes the words ''areas of forecasted or reported'' from the wind turbulence limitation; adds the word ''spreads'' when referencing wind gusts; adds the phrase ''but no lower than 60 knots'' to the same section; deletes the reference to the requirement to record compliance that was contained in paragraph (b) of the existing Priority Letter AD; and, adds another paragraph to state that special flight permits will not be issued to accomplish the requirements of this AD.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–SW–12–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 a new airworthiness directive (AD), Amendment 39–9165, to read as follows:

95–04–13 Robinson Helicopter Company: Amendment 39–9165. Docket No. 95–SW–12–AD. Supersedes Priority Letter AD 95–02–04, issued January 12, 1995.

Applicability: Model R44 helicopters, certificated in any category.

Compliance: Required before further flight, unless accomplished previously.

To prevent main rotor (M/R) stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system and subsequent loss of control of the helicopter, accomplish the following:

(a) Insert the following information into the Model R44 Rotorcraft Flight Manual, revised September 6, 1994. Compliance with the Limitations section is mandatory. The Normal Procedures and Emergency Procedures sections are informational.

Limitations Section

(1) Flight when surface winds exceed 25 knots, including gusts, is prohibited.

(2) Flight when surface wind gust spreads exceed 15 knots is prohibited.

(3) Flight in wind shear is prohibited.

(4) Flight in moderate, severe, or extreme turbulence is prohibited.

(5) Adjust forward airspeed to between 60 knots and 0.7 V_{ne} but no lower than 60 knots upon inadvertently encountering moderate, severe, or extreme turbulence.

Note: Moderate turbulence is turbulence that causes: (1) Changes in altitude or attitude; (2) variations in indicated airspeed; and (3) aircraft occupants to feel definite strains against seat belts.

Normal Procedures Section

Note

Until the FAA completes its research into the conditions and aircraft characteristics that lead to main rotor blade/fuselage contact accidents, and corrective type design changes and operating limitations are identified, R44 pilots are strongly urged to become familiar with the following information and comply with these recommended procedures.

Main Rotor Stall: Many factors may contribute to main rotor stall and pilots should be familiar with them. Any flight condition that creates excessive angle of attack on the main rotor blades can produce a stall. Low main rotor RPM, aggressive maneuvering, high collective angle (often the result of high-density altitude, over-pitching [exceeding power available] during climb, or high forward airspeed) and slow response to the low main rotor RPM warning horn and light may result in main rotor stall. The effect of these conditions can be amplified in turbulence. Main rotor stall can ultimately result in contact between the main rotor and airframe. Additional information on main rotor stall is provided in the Robinson Helicopter Company Safety Notices SN–10, SN–15, SN–20, SN–24, SN–27, and SN–29.

Mast Bumping: Mast bumping may occur with a teetering rotor system when excessive main rotor flapping results from low ''G'' (load factor below 1.0) or abrupt control input. A low ''G'' flight condition can result from an abrupt cyclic pushover in forward flight. High forward airspeed, turbulence, and excessive sideslip can accentuate the adverse effects of these control movements. The excessive flapping results in the main rotor hub assembly striking the main rotor mast with subsequent main rotor system separation from the helicopter.

To avoid these conditions, pilots are strongly urged to follow these recommendations:

(1) Maintain cruise airspeeds greater than 60 knots indicated airspeed and less than 0.9 V_{ne}, but no lower than 60 knots.

(2) The possibility of rotor stall is increased at high density altitudes; therefore, avoid flight at high density altitudes.

(3) Use maximum ''power-on'' RPM at all times during powered flight.

(4) Avoid sideslip during flight. Maintain in-trim flight at all times.

(5) Avoid large, rapid forward cyclic inputs in forward flight, and abrupt control inputs in turbulence.

Emergency Procedures Section

(1) RIGHT ROLL IN LOW ''G'' CONDITION

Gradually apply aft cyclic to restore positive ''G'' forces and main rotor thrust. Do not apply lateral cyclic until positive ''G'' forces have been established.

(2) UNCOMMANDED PITCH, ROLL, OR YAW RESULTING FROM FLIGHT IN TURBULENCE.

Gradually apply controls to maintain rotor RPM, positive ''G'' forces, and to eliminate sideslip. Minimize cyclic control inputs in turbulence; do not over control.

(3) INADVERTENT ENCOUNTER WITH MODERATE, SEVERE, OR EXTREME TURBULENCE.

If the area of turbulence is isolated, depart the area; otherwise, land the helicopter as soon as practical.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Operations Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits, pursuant to sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), will not be issued.

(d) This amendment becomes effective on March 17, 1995.

Issued in Fort Worth, Texas, on February 23, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–5096 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–SW–11–AD; Amendment 39–9166; AD 95–04–14]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Robinson Helicopter Company Model R22 helicopters, that currently requires revisions to the Limitations section, the Normal Procedures section, and the Emergency Procedures section of the R22 Rotorcraft Flight Manual, revised February 4, 1993. These revisions limit operations in high winds and turbulence; provide information about main rotor (M/R) stalls and mast bumping; and, provide recommendations for avoiding these situations. Additionally, emergency procedures are provided for use should certain conditions be encountered. This amendment requires the same revisions required by the existing Priority Letter AD, but revises certain words and phrases to further clarify the revised Limitations and Normal Procedures sections, deletes the paragraph that referenced recording compliance with the AD, and adds another paragraph that states that no special flight permits will be issued prior to compliance with this AD. This amendment is prompted by 26 accidents since 1981 that resulted in fatalities and involved the M/R blades contacting the helicopters' fuselage. The actions specified by this AD are intended to prevent M/R stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system and subsequent loss of control of the helicopter.

DATES: Effective March 17, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–11–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On January 12, 1995, the FAA issued Priority Letter AD 95–02–03, to require revisions to the Limitations section, the Normal Procedures section, and the Emergency Procedures section of the R22 Rotorcraft Flight Manual, revised February 4, 1993. These revisions limit operations in high winds, turbulence, and wind shear conditions; provide information about M/R stalls and mast bumping; and, provide recommendations for avoiding these situations. That action was prompted by 26 Model R22 accidents since 1981 involving M/R blades contacting the helicopters' fuselage. M/R stall and mast bumping may have caused these M/R blade contacts with the fuselage. All of these accidents resulted in fatalities. Limited pilot experience in rotorcraft has been identified as common to these accidents. High winds and turbulence were also noted in some of the accidents. Airspeed and low rotor RPM could also be influencing factors in these M/R blades contacting the fuselage. Flight in strong or gusty winds, areas of wind shear, or areas of moderate, severe, or extreme turbulence can degrade the helicopter handling qualities, thereby creating an unsafe condition. These conditions, if not compensated for, could result in M/R stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that the words ''areas of forecasted or reported'' should be deleted from the revision to the Limitations section of the Model R22 Rotorcraft Flight Manual, revised February 4, 1993. Some operators receive area forecasts and reports that cover wide geographic regions. These forecasts and reports can refer to turbulence in areas unrelated to the actual area of operation. Forecasted or reported wind shear or turbulence outside of the operational area was not intended to be a flight limitation. The word ''spreads'' was added to the term ''wind gusts'' to define this limitation as the spread or variance of wind velocities. The phrase ''but no lower than 60 knots'' was added to the Limitations section because of the possibility that at higher altitudes, 0.7 V_{ne} could be lower than 60 knots. Additionally, the phrase ''but no lower than 60 knots'' was added to recommendation (1) of the Normal Procedures section because of the possibility that at higher altitudes, 0.9 V_{ne} could be lower than 60 knots. Below 60 knots, the energy required to recover from a low-rotor RPM condition by flaring the helicopter and converting forward airspeed to rotor speed is unavailable. The reference to the requirement to record compliance that was contained in paragraph (b) of the existing Priority Letter AD has been deleted since part 91.417(a)(2)(v)

already contains that requirement. Finally, another paragraph has been inserted to state that special flight permits will not be issued to operators for the purpose of obtaining and inserting the three pages into the rotorcraft flight manual. Due to the immediate compliance time and the criticality of preventing M/R blade contacts with the fuselage, this rule is being issued immediately to revise the operating limitation of the helicopter to a safer level.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Helicopter Company Model R22 helicopters of the same type design, this AD supersedes Priority Letter AD 95–02–03 to require the same revisions to the Limitations section, the Normal Procedures section, and the Emergency Procedures section of the R22 Rotorcraft Flight Manual, revised February 4, 1993, that were required by the existing Priority Letter AD, but deletes the words ''areas of forecasted or reported'' from the wind turbulence limitation; adds the word ''spreads'' when referencing wind gusts; adds the phrase ''but no lower than 60 knots'' to the same section; deletes the reference to the requirement to record compliance that was contained in paragraph (b) of the existing Priority Letter AD; and, adds another paragraph to state that special flight permits will not be issued to accomplish the requirements of this AD.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–SW–11–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 a new airworthiness directive (AD), Amendment 39–9166, to read as follows:

95–04–14 **Robinson Helicopter Company:** Amendment 39–9166. Docket No. 95–SW–11–AD. Supersedes Priority Letter AD 95–02–03, issued January 12, 1995.

Applicability: Model R22 helicopters, certificated in any category.

Compliance: Required before further flight, unless accomplished previously.

To prevent main rotor (M/R) stall or mast bumping, which could result in the M/R blades contacting the fuselage causing failure of the M/R system and subsequent loss of control of the helicopter, accomplish the following:

(a) Insert the following information into the Model R22 Rotorcraft Flight Manual, revised February 4, 1993. Compliance with the Limitations section is mandatory. The Normal Procedures and Emergency Procedures sections are informational.

Limitations Section

(1) Flight when surface winds exceed 25 knots, including gusts, is prohibited.

(2) Flight when surface wind gust spreads exceed 15 knots is prohibited.

(3) Flight in wind shear is prohibited.

(4) Flight in moderate, severe, or extreme turbulence is prohibited.

(5) Adjust forward airspeed to between 60 knots and 0.7 V_{ne} but no lower than 60 knots upon inadvertently encountering moderate, severe, or extreme turbulence.

Note: Moderate turbulence is turbulence that causes: (1) changes in altitude or attitude; (2) variations in indicated airspeed; and (3) aircraft occupants to feel definite strains against seat belts.

Normal Procedures Section

Note

Until the FAA completes its research into the conditions and aircraft characteristics that lead to main rotor blade/fuselage contact accidents, and corrective type design changes and operating limitations are identified, R22 pilots are strongly urged to become familiar with the following information and comply with these recommended procedures.

Main Rotor Stall: Many factors may contribute to main rotor stall and pilots should be familiar with them. Any flight condition that creates excessive angle of attack on the main rotor blades can produce a stall. Low main rotor RPM, aggressive maneuvering, high collective angle (often the result of high-density altitude, over-pitching [exceeding power available] during climb, or high forward airspeed) and slow response to the low main rotor RPM warning horn and

light may result in main rotor stall. The effect of these conditions can be amplified in turbulence. Main rotor stall can ultimately result in contact between the main rotor and airframe. Additional information on main rotor stall is provided in the Robinson Helicopter Company Safety Notices SN–10, SN–15, SN–20, SN–24, SN–27, and SN–29.

Mast Bumping: Mast bumping may occur with a teetering rotor system when excessive main rotor flapping results from low ''G'' (load factor below 1.0) or abrupt control input. A low ''G'' flight condition can result from an abrupt cyclic pushover in forward flight. High forward airspeed, turbulence, and excessive sideslip can accentuate the adverse effects of these control movements. The excessive flapping results in the main rotor hub assembly striking the main rotor mast with subsequent main rotor system separation from the helicopter.

To avoid these conditions, pilots are strongly urged to follow these recommendations:

(1) Maintain cruise airspeeds greater than 60 knots indicated airspeed and less than 0.9 V_{ne}, but no lower than 60 knots.

(2) The possibility of rotor stall is increased at high density altitudes; therefore, avoid flight at high density altitudes.

(3) Use maximum ''power-on'' RPM at all times during powered flight.

(4) Avoid sideslip during flight. Maintain in-trim flight at all times.

(5) Avoid large, rapid forward cyclic inputs in forward flight, and abrupt control inputs in turbulence.

Emergency Procedures Section

(1) RIGHT ROLL IN LOW ''G'' CONDITION

Gradually apply aft cyclic to restore positive ''G'' forces and main rotor thrust. Do not apply lateral cyclic until positive ''G'' forces have been established.

(2) UNCOMMANDED PITCH, ROLL, OR YAW RESULTING FROM FLIGHT IN TURBULENCE.

Gradually apply controls to maintain rotor RPM, positive ''G'' forces, and to eliminate sideslip. Minimize cyclic control inputs in turbulence; do not over control.

(3) INADVERTENT ENCOUNTER WITH MODERATE, SEVERE, OR EXTREME TURBULENCE.

If the area of turbulence is isolated, depart the area; otherwise, land the helicopter as soon as practical.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Operations Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits, pursuant to sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), will not be issued.

(d) This amendment becomes effective on March 17, 1995.

Issued in Fort Worth, Texas, on February 23, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–5097 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–ANE–06; Amendment 39–9140; AD 95–03–03]

Airworthiness Directives; Hartzell Propeller Inc. Model HC–B4TN–3/T10173F(N)(B,K)–12.5 and HC–B4TN–3A/T10173F(N)(B,K)–12.5 Propellers Installed on Beech A100 and A100A Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hartzell Propeller Inc. Model HC–B4TN–3/T10173F(N)(B,K)–12.5 and HC–B4TN–3A/T10173F(N)(B,K)–12.5 propellers installed on Beech A100 and A100A aircraft. This action requires an initial and repetitive inspections, and specified rework or retirement, as necessary, of the propeller hub assemblies and propeller blades. This amendment is prompted by a determination that the current hub design and blade repair limits do not adequately protect against initiation of fatigue cracks in the propeller hub arm bore and do not prevent the resonant speed of the propeller from shifting into the permitted ground idle operating range. The actions specified in this AD are intended to prevent initiation of fatigue cracks in the propeller hub arm bore and subsequent progression to failure, with departure of the hub arm and blade, that may result in loss of aircraft control.

DATES: Effective March 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–06, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634; telephone (513) 778–4200, fax (513) 778–4391. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Room 232, Des Plaines, IL 60018; telephone (708) 294–7031, fax (708) 294–7834.

SUPPLEMENTARY INFORMATION: On December 22, 1994, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 95–01–02, applicable to Hartzell Model HC–B4TN–5(D,G,J)L/LT10282(B,K)–5.3R and HC–B4TN–5(D,G,J)L/LT10282N(B,K)–5.3R propellers installed on Mitsubishi MU–2 series aircraft. That AD requires new propeller blade repair limits and requires replacement of propeller hubs with new improved fatigue strength steel hubs which require inspection, and specified rework as necessary, at a repetitive interval of 3,000 hours time in service (TIS). That AD was prompted by a determination that the previous hub design and blade repair limits did not adequately protect against initiation of fatigue cracks in the propeller hub arm bore and did not prevent the resonant speed of the propeller from shifting into the permitted ground idle operating range when installed in Mitsubishi MU–2 Series aircraft. That condition, if not corrected, can result in fatigue cracks in the propeller hub arm bore and subsequent progression to failure, with departure of the hub arm and blade, that may result in loss of aircraft control.

The FAA has determined, based on operating stresses and similarity of propeller type design, that similar fatigue cracks could occur in Hartzell Propeller Inc. Model HC–B4TN–3/T10173F(N)(B,K)–12.5 and HC–B4TN–3A/T10173F(N)(B,K)–12.5 propellers installed on Beech A100 and A100A aircraft.

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. A196A, dated December 27, 1994, that describes procedures for initial and repetitive inspections, and specified rework or retirement, as necessary, of the propeller hub assemblies and propeller blades.

Since an unsafe condition has been identified that is likely to exist or develop on other Hartzell Propeller Inc. Model HC–B4TN–3/T10173F(N)(B,K)–12.5 and HC–B4TN–3A/T10173F(N)(B,K)–12.5 propellers of the same type design, this AD is being issued to require initial and repetitive inspections, and specified rework or retirement, as necessary, of the propeller hub assemblies and propeller blades. The actions are required to be accomplished in accordance with the ASB described previously.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95 ANE–06.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

95–03–03 Hartzell Propeller Inc.: Amendment 39–9140. Docket 95–ANE–06.

Applicability: Hartzell Propeller Inc. Model HC–B4TN–3/T10173F(N) (B,K)–12.5 and HC–B4TN–3A/T10173F(N) (B,K)–12.5 propellers installed on Beech A100 and A100A aircraft.

Note: The parentheses indicate the presence or absence of an additional letter(s) which vary the basic propeller blade model designation. This airworthiness directive (AD) still applies regardless of whether these letters are present or absent on the propeller blade model designation.

Compliance: Required as indicated, unless accomplished previously.

To prevent initiation of fatigue cracks in the propeller hub arm bore and subsequent progression to failure, with departure of the hub arm and blade, that may result in loss of aircraft control, accomplish the following:

(a) For affected propellers with Time-Since-New (TSN) greater than or equal to 3,000 hours or TSN unknown on the effective date of this AD, within the next 150 hours Time-In-Service (TIS) or the next 12 calendar months after the effective date of this AD, whichever occurs first, accomplish paragraphs (a)(1), (a)(2), and either (a)(3) or (a)(4) of this AD:

(1) Remove affected propeller hub and blade assemblies from the aircraft for inspection, and accomplish specified rework or retirement, if necessary, in accordance with Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. A196A, dated December 27, 1994.

(2) Replace propeller blade assemblies that have been rejected or retired per paragraph (a)(1) of this AD with propeller blade assemblies inspected and reworked, if necessary, per paragraph (a)(1) of this AD or new blade assemblies. Thereafter, at intervals of 3,000 hours TIS or 60 calendar months, whichever occurs first, inspect, and rework or retire, if necessary, the blade assemblies in accordance with Hartzell Propeller Inc. ASB No. A196A, dated December 27, 1994.

(3) Replace propeller hub assemblies that have been rejected or retired per paragraph (a)(1) of this AD with propeller hub assemblies that have had the hub arm bores inspected (and reworked as necessary), pilot tubes replaced, and have a metal impression stamp at the end of the hub serial number with suffix letter ''M'', followed by a number (1, 2, 3, etc.) to indicate the number of repetitive inspections performed in accordance with Hartzell ASB No. A196A, dated December 27, 1994. Thereafter, at intervals of 600 hours TIS or 60 calendar months, whichever occurs first, inspect, and rework or retire, as necessary, the hub assemblies in accordance with Hartzell Propeller Inc. ASB No. A196A, dated December 27, 1994.

(4) Replace propeller hub unit Part Number (P/N) 840–139 or P/N 840–89, unless already accomplished, with a hub that has compressive rolled internal bearing bores, which is identified with the addition of a third letter ''A'' in the hub serial number prefix (e.g. ''CDA1234''). Thereafter, at intervals of 3,000 hours TIS or 60 calendar months, whichever occurs first, inspect, and rework or retire, as necessary, the hub assemblies in accordance with Hartzell Propeller Inc. ASB No. A196A, dated December 27, 1994.

(b) For affected propellers with less than 3,000 hours TSN on the effective date of this AD, within the next 300 hours TIS, or prior to the accumulation of 3,150 hours TSN, or within the next 12 calendar months after the effective date of this AD, whichever occurs first, accomplish paragraphs (a)(1), (a)(2), and either (a)(3) or (a)(4) of this AD.

(c) Any blade repairs made after the effective date of this AD shall be accomplished in accordance with the procedures specified in Hartzell ASB No. A196A, dated December 27, 1994.

(d) For propellers that experience a blade strike, as defined in paragraph (f) of this AD, after the effective date of this AD, prior to further flight, accomplish paragraphs (a)(1), (a)(2), and either (a)(3) or (a)(4) of this AD.

(e) For propellers that have experienced a blade strike, as defined in paragraph (f) of this AD, prior to the effective date of this AD, within the next 100 hours TIS after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and either (a)(3) or (a)(4) of this AD.

(f) A blade strike is defined as a propeller having any blade(s) bent beyond the repair limits specified in Hartzell Propeller Inc. Standard Practices Manual 61–01–02, Revision 1, Pages 1104–1105, dated June 1994.

(g) 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, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

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

(h) Except when propellers have experienced a blade strike, special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(i) The inspections and rework shall be accomplished in accordance with the following service documents:

Document No.	Pages	Date
Hartzell Propeller Inc., ASB No. A196A ..... Total pages: 5.	1–5	Dec. 27, 1994.
Hartzell Propeller Inc., Standard Practices Manual, 61–01–02, Revision 1 ..... Total pages: 2.	1104–1105	June 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634; telephone (513) 778–4200, fax (513) 778–4391. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on March 17, 1995.

Issued in Burlington, Massachusetts, on February 7, 1995.

Donald F. Perrault,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–4248 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–NM–253–AD; Amendment 39–9159; AD 95–04–07]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, and –30 Airplanes, and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes. This action requires inspections to determine the condition of the lockwires on the forward engine mount bolts and correction of any discrepancies found. This action also provides for termination of the inspections for some airplanes by installing retainers on the bolts. This amendment is prompted by reports of stretched or broken lockwires on the forward engine mount bolts. The actions specified in this AD are intended to prevent broken lockwires, which could result in loosening of the engine mount bolts, and subsequent separation of the engine from the airplane.

DATES: Effective March 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–253–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen A. Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5238; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On October 10, 1985, the FAA issued AD 85–22–01, amendment 39–5157, (50 FR 42153, October 18, 1985) applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, and –40 airplanes, and KC–10A (military) airplanes. That AD requires repetitive inspections of the engine-to-pylon forward and aft mount and the engine mount bolts; and replacement of the bolts and nuts, torque check of the bolts, and installation of a torque stripe on the bolts, if necessary. That AD provided for termination of the inspections by replacing the engine mount bolts with bolts having a lockwire hole in the bolt head, installing tabs with a lockwire hole, and installing lockwires.

Since the issuance of that AD, the FAA has received reports of broken or stretched lockwires on the forward engine mount bolts on several Model DC–10–30 airplanes on which the terminating actions described in AD 85–22–01 had been accomplished. Investigation has revealed that these lockwires may have stretched and eventually broken because the foward engine mount bolts had loosened. McDonnell Douglas has developed a bolt retainer that will prevent these bolts from loosening from the engines of Model DC–10–30 airplanes and KC–10A (military) airplanes.

Additionally, the FAA has received reports of loose bolts on the engine

mounts of Model DC–10–10 airplane engines. However, McDonnell Douglas has not yet developed a bolt retainer for Model DC–10–10 or –15 airplanes, or KC–10A airplanes.

Broken lockwires, if not corrected, could result in loosening of the engine mount bolts and subsequent separation of the engine from the airplane.

The lockwires on the forward engine mount bolts of Model DC–10–30 airplanes are similar to those installed on Model DC–10–10 and –15 airplanes, and KC–10A airplanes. Therefore, the FAA finds that Model DC–10–10 and –15 airplanes, and KC–10A airplanes are also subject to the same unsafe condition.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–71A159, Revision 1, dated January 31, 1995, which describes procedures for repetitive visual inspections to detect broken lockwires on the forward engine mount bolts on engines 1, 2, and 3. If any broken lockwire is found, the service bulletin describes procedures to check the torque of the bolt, to install a new lockwire, and to install a torque stripe on the bolt. This service bulletin also describes procedures for subsequent visual inspections to detect misalignment of the torque stripe.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent broken lockwires, which could result in loosening of the engine mount bolts and subsequent separation of the engine from the airplane. This AD requires visual inspections to determine the condition of the lockwires on the forward engine mount bolts on engines 1, 2, and 3, and correction of discrepancies found. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

The required compliance time of 120 days is usually sufficient to allow for a brief comment period before adoption of a final rule. In this AD, however, that compliance time was selected because of the degree of urgency associated with addressing the subject unsafe condition and the practical aspects of performing the inspection within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. Further, the FAA took into account the 6-month compliance time recommended by the manufacturer, as well as the number of days required for the rulemaking process; in consideration of these factors, the FAA finds that 120 days after the effective date of this rule will fall approximately at the same time as that recommended by the manufacturer.

This AD also requires that operators report the results of the visual inspections to the FAA. The intent of these reports is to enable the FAA to determine how widespread the problem of broken lockwires may be in the affected fleet. Based on the results of these reports, further corrective action may be warranted.

Since retainers have been developed only for Model DC–10–30 airplanes and KC–10A airplanes, this AD also provides for the termination of the visual inspections by installing retainers on the engine mount bolts on Model DC–10–30 airplanes and KC–10A airplanes in accordance with Revision 6 of McDonnell Douglas DC–10 Service Bulletin 71–133, dated June 30, 1992.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–253–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends 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:

95–04–07 McDonnell Douglas: Amendment 39–9159. Docket 94–NM–253–AD.

Applicability: Model DC–10–30 airplanes on which bolt retainers have not been installed on the engine mount in accordance with McDonnell Douglas DC–10 Service Bulletin 71–133, Revision 6, dated June 30, 1992; Model DC–10–10 and –15 airplanes; and KC–10A (military) airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent broken lockwires, which could result in loosening of the engine mount bolts and subsequent separation of the engine from the airplane, accomplish the following:

(a) Within 120 days after the effective date of this AD, unless accomplished previously within the last 750 flight hours prior to the effective date of this AD, perform a visual inspection to detect broken lockwires on the forward engine mount bolts on engines 1, 2, and 3, in accordance with McDonnell Douglas Alert Service Bulletin DC10–71A159, Revision 1, dated January 31, 1995.

(1) If no lockwire is found broken, repeat the inspection thereafter at intervals not to exceed 750 flight hours.

(2) If any lockwire is found broken, prior to further flight, check the torque of the bolt, install a new lockwire, and install a torque stripe on the bolt, in accordance with the alert service bulletin. Thereafter at intervals not to exceed 750 flight hours, perform a visual inspection to detect misalignment of the torque stripes, and repeat the inspection to detect broken lockwires, in accordance with the alert service bulletin.

(b) Submit a report of findings of broken lockwires and/or misaligned torque stripes found during the inspections required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; or fax to (310) 627–5210, at the times specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable. The report must include the manufacturer's fuselage number of the airplane, number of cycles on the airplane, torque value of the bolt, and condition of the lockwire (i.e, broken or intact). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspections are accomplished after the effective date of this AD: Submit reports within 30 days after finding any discrepancy.

(2) For airplanes on which the inspections have been accomplished prior to the effective date of this AD: Submit the initial report within 30 days after the effective date of this AD, and subsequent reports within 30 days after finding any discrepancy.

(c) For Model DC–10–30 airplanes and KC–10A (military) airplanes only: Installation of retainers on the engine mount bolts in accordance with Figure 6 of Revision 6 of McDonnell Douglas DC–10 Service Bulletin 71–133, dated June 30, 1992, constitutes terminating action for the requirements of this AD.

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

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

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

(f) The inspections shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–71A159, Revision 1, dated January 31, 1995. The installation shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 71–133, Revision 6, dated June 30, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 17, 1995.

Issued in Renton, Washington, on February 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4379 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–14–AD; Amendment 39–9164; AD 95–04–12]

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A310, A300–600, and A320 series airplanes. This action requires inspections to verify proper installation of the grille over the air extraction duct of the lavatory and to detect blockages in the air extraction duct of the lavatory, and correction of any discrepancies. This amendment is prompted by reports of obstructions in the air extraction system of the lavatories. The actions specified in this AD are intended to prevent obstructions in the air extraction system of the lavatory, which may result in the failure of the smoke detection system to detect smoke in the lavatories.

DATES: Effective March 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–14–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A310, A300–600, and A320 series airplanes. The French DGAC advises that there have been reports of blockage of the air duct of the air extraction system for the lavatories on some airplanes. Investigation into the cause of this blockage has revealed that either the air extraction duct may be misaligned with the hole in the air extraction cover (i.e., the duct may be inverted and positioned 180 degrees out of alignment), or the ceiling louver (grille) that houses the ceiling light may be installed improperly (i.e., the light may be positioned directly over the point of extraction, which would prevent air from being extracted).

Each lavatory is equipped with an extraction system to remove lavatory air through a duct located above the lavatory ceiling. This duct is equipped with a smoke detector to monitor the extracted air for the presence of smoke. If this duct is obstructed, the air extraction system of the lavatories may be impaired, which could result in the smoke detection system failing to detect smoke in the lavatories.

Airbus has issued All Operators Telex (AOT) 26–12, Revision 1, dated July 4, 1994, which describes procedures for inspections to verify proper installation of the grille (ceiling louver) over the air extraction duct of the lavatory and to detect blockages in the air extraction duct of the lavatory. This AOT also provides instructions for correcting improperly installed grilles and blockages in the duct. The French DGAC classified this AOT as mandatory and issued French airworthiness directives 94–169–161(B)R1, dated September 28, 1994 (for Model A310 and A300–600 series airplanes), and 94–168–058(B), dated July 20, 1994 (for Model A320 series airplanes), in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the French DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the lavatory smoke detection system to detect smoke in the lavatories. This AD requires inspections to verify proper installation of the grille over the air extraction duct of the lavatory and to detect blockages in the air extraction duct of the lavatory, and correction of improperly installed grilles and blockages in the duct. The actions are required to be accomplished in accordance with the AOT described previously.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–14–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

95–04–12 Airbus Industrie: Amendment 39–9164. Docket 95–NM–14–AD.

Applicability: Model A310 and A300–600 series airplanes on which Airbus Modification 10156 has not been accomplished, and Model A320 series airplanes on which Airbus Modification 22561 or Airbus Service Bulletin A320–26–1017 has not been accomplished; certificated in any category. This AD is not applicable to airplanes on which the air extraction system is not configured to detect smoke in the extracted air. (That is, airplanes that do not have standard air extraction systems are not subject to the requirements of this AD.)

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the lavatory smoke detection system to detect smoke in the lavatory, accomplish the following:

(a) Within 450 flight hours after the effective date of this AD, perform an inspection of each lavatory to verify proper installation of the grille over the air extraction duct of the lavatories, and to detect blockage in the air extraction duct of the lavatories, in accordance with Airbus All Operators Telex (AOT) 26–12, Revision 1, dated July 4, 1994.

(1) If the grille is found to be properly installed and if no blockage is found, repeat the inspection thereafter whenever the cover over the air extraction duct of the lavatories or any ceiling louver (grille) of the ceiling light in the lavatory is removed or replaced for any reason.

(2) If the grille is found to be improperly installed and/or if blockage is found, prior to further flight, correct any discrepancies found, in accordance with Airbus AOT 26–12, Revision 1, dated July 4, 1994. Repeat the inspection thereafter whenever the cover over the air extraction duct of the lavatories or any ceiling louver (grille) of the ceiling light in the lavatory is removed or replaced for any reason.

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

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

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

(d) The inspections and correction of discrepancies shall be done in accordance with Airbus AOT 26–12, Revision 1, dated July 4, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 17, 1995.

Issued in Renton, Washington, on February 17, 1995.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4544 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 92–ANE–34; Amendment 39–9163; AD 95–04–11]

Airworthiness Directives; Textron Lycoming ALF502R and ALF502L Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Textron Lycoming ALF502R series turbofan engines, that currently requires the establishment of a reduced stress rupture retirement life limit for certain third stage turbine disks. This amendment establishes a new increased stress rupture retirement life limit for certain third stage turbine disks used in conjunction with third stage turbine nozzles that have improved cooling effectiveness, expands the applicability by adding the ALF502L series engines, and establishes other new reduced stress rupture retirement life limits. This amendment is prompted by the introduction of an improved design third stage turbine nozzle, and a new reduced stress rupture retirement life limit for certain third stage turbine disks on the ALF502L series engines. The actions specified by this AD are intended to prevent a total loss of engine power, inflight engine shutdown, and possible damage to the aircraft.

DATES: Effective April 3, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 3, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Engines, 550 Main Street, Stratford, CT 06497; (203) 385–1470. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 90–25–02, Amendment 39–6811 (55 FR 48592, November 21, 1990), which is applicable to Textron Lycoming ALF502R series turbofan engines, was published in the **Federal Register** on March 15, 1993 (58 FR 13711). That action proposed to expand the applicability by adding the ALF502L series. That action would also provide for increased stress rupture retirement life limits for certain third stage turbine disks when used in conjunction with third stage turbine nozzles that have improved cooling effectiveness.

On October 28, 1994, AlliedSignal Inc. purchased the turbine engine product line of Textron Lycoming, but as of this date the anticipated name change on the type certificate for the

ALF502L series engines has not occurred.

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

The commenter concurs with the rule as proposed.

Since publication of the NPRM, Textron Lycoming has issued Revision 22 to Service Bulletin ALF502 72–0002, dated December 23, 1992, that introduces new part numbered rotor parts and adds pro-rating formulas to include the new parts. The technical content in regard to affected components is unchanged. This final rule has been revised to reference this later revision.

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

There are approximately 900 Textron Lycoming ALF502R and ALF502L series turbofan series engines of the affected design in the worldwide fleet. The FAA estimates that 300 engines installed on aircraft of U.S. registry will be affected by this AD, and that 100 are ALF502L series engines that are subject to the reduction in service life requirement. It is also estimated that to implement the reduction in service life requirement it will take approximately 14 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. The reduction in service life requirement will cost approximately $30,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,077,000.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 removing Amendment 39–6811 (55 FR 48592, November 21, 1990) and by adding a new airworthiness directive, Amendment 39–9163, to read as follows:

95–04–11 Textron Lycoming: Amendment 39–9163. Docket 92–ANE–34. Supersedes AD 90–25–02, Amendment 39–6811.

Applicability: Textron Lycoming ALF502R and ALF502L series turbofan engines installed on but not limited to British Aerospace BAe–146 and Canadair Challenger CL600 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent a total loss of engine power, inflight shutdown, and possible damage to the aircraft, accomplish the following:

(a) Remove from service and replace with a serviceable part third stage turbine disks, Part Numbers (P/N) 2–143–030–05, 2–143–030–08, and 2–143–030–14, as follows:

(1) For disks that have been installed only with third stage turbine nozzles P/Ns 2–141–130–52 or 2–141–120–53, remove from service as follows:

(i) For disks that have accumulated 13,220 or more hours time in service (TIS) since new on the effective date of this AD, within the next 80 hours TIS after the effective date of this AD for the ALF502L engines, or within the next 80 hours TIS after December 11, 1990, (the effective date of AD 90–25–02), for the ALF502R engines, but not to exceed the existing cyclic life limit,

(ii) For disks that have accumulated less than 13,220 hours TIS since new on the effective date of this AD, prior to accumulating more than 13,300 hours TIS since new, but not to exceed the existing cyclic life limit.

(iii) Thereafter, remove disks prior to accumulating more than 13,300 hours TIS since new, but not to exceed the existing cyclic life limit.

(2) For disks that have been installed only with third stage turbine nozzles, P/Ns 2–141–120–57 or 2–141–120–R56, remove from service as follows:

(i) For disks that have accumulated 27,420 or more hours TIS since new on the effective date of this AD, within the next 80 hours TIS after the effective date of this AD, but not to exceed the existing cyclic life limit.

(ii) For disks that have accumulated less than 27,420 hours TIS since new on the effective date of this AD, prior to accumulating more than 27,500 hours TIS since new, but not to exceed the existing cyclic life limit.

(iii) Thereafter, remove disks prior to accumulating more than 27,500 hours TIS since new, but not to exceed the existing cyclic life limit.

(3) For disks that have been installed with both third stage turbine nozzles, P/Ns 2–141–120–52 or 2–141–120–53, and third stage turbine nozzles, P/Ns 2–141–120–57 or 2–141–120–R56, remove from service as follows:

(i) Determine the prorated hourly life limit in accordance with the procedure defined in the Accomplishment Instructions, Section 2.B.(2) of Textron Lycoming Service Bulletin (SB) ALF502 72–0002 (for ALF502R series engines) Revision 22, dated December 23, 1992, or Textron Lycoming SB ALF502 72–0004 (for ALF502L series engines) Revision 11, dated June 17, 1987. From this prorated hourly life limit, subtract 80 hours TIS to determine the compliance threshold for each engine model.

(ii) For disks that have equalled or exceeded the compliance threshold on the effective date of this AD, within the next 80 hours TIS, but not to exceed the existing cyclic life limit.

(iii) For disks that have accumulated less than the compliance threshold on the effective date of this AD, prior to accumulating more than the calculated prorated hourly life limit.

(iv) Thereafter, remove disks at or prior to accumulating the prorated hourly life limit, but not to exceed the existing cyclic life limit.

(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, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(c) The actions required by this AD shall be done in accordance with the following Textron Lycoming SB's:

Document No.	Pages	Revision	Date
ALF502 72–0002	1–2	22	Dec. 23, 1992.
	3	18	Dec. 21, 1989.
	4–7	22	Dec. 23, 1992.
	8	21	Sept. 25, 1992.
	9–10	22	Dec. 23, 1992.
	11	21	Sept. 25, 1992.
	12–26	22	Dec. 23, 1992.
	27	21	Sept. 25, 1992.
Total pages: 27.			
ALF502 72–0004	1–16	11	June 17, 1987.
Total pages: 16.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, 550 Main Street, Stratford, CT 06497; (203) 385–1470. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(d) This amendment becomes effective on April 3, 1995.

Issued in Burlington, Massachusetts, on February 16, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–4853 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–21–AD; Amendment 39–9167; AD 95–04–15]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires inspection to detect cracking of the outboard and inboard surfaces of the upper spar angles of certain wing pylons, and repair of any cracked upper spar angles. This amendment requires repetitive inspections to detect cracking of the upper spar angles, and revision of the applicability to exclude an airplane and to include certain other airplanes. This amendment is prompted by an additional report of cracking of the upper inboard spar cap. The actions specified in this AD are intended to prevent reduced structural integrity of the airplane due to cracking in the subject areas.

DATES: Effective March 17, 1995.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–54A049, Revision 1, dated February 7, 1995, as listed in the regulations, is approved by the Director of the Federal Register as of March 17, 1995.

The incorporation by reference of McDonnell Douglas MD–11 Alert Service Bulletin A54–49, dated December 2, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 12, 1995 (59 FR 66669, December 28, 1994).

Comments for inclusion in the Rules Docket must be received on or before May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–21–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On December 20, 1994, the FAA issued AD 94–26–11, amendment 39–9106 (59 FR 66669, December 28, 1994), applicable to certain McDonnell Douglas Model MD–11 series airplanes. That AD requires a visual inspection to detect cracking of the outboard and inboard surfaces of the upper spar angles on the number 1 and number 3 wing pylons, and repair of any cracked upper spar angles. That AD also requires that operators report the results of the visual inspection to the FAA. That action was prompted by a report of cracking in the upper spar cap of the wing pylon. The actions required by that AD are intended to prevent reduced structural integrity of the airplane due to cracking of the upper spar cap.

Since the issuance of that AD, another operator of McDonnell Douglas Model MD–11 series airplanes has reported that, while accomplishing the inspection required by AD 94–26–11, a crack was found on the upper inboard spar cap of the number 3 wing pylon. Investigation revealed that the solution heat treatment was omitted during the manufacturing process of the spar caps. Therefore, these spar caps are believed to be particularly susceptible to stress corrosion cracking.

As a result of this latest report, McDonnell Douglas conducted a crack analysis of the upper spar caps. The FAA has reviewed the data gathered from this analysis and has determined that, to maintain the safety of the Model MD–11 fleet, repetitive inspections must be performed to detect cracking in the critical areas of the spar cap.

Further, investigation revealed that one airplane, manufacturer's fuselage number 574, is not subject to this unsafe condition since it was inspected prior to delivery, and subsequently, discrepant spar caps were replaced with non-suspect parts. Additionally, the manufacturer has identified three additional airplanes, manufacturer's fuselage numbers 576, 577, and 578, that are subject to unsafe condition

since the discrepant spar caps were installed on these airplanes.

Cracking of the spar angles, if not detected and corrected in a timely manner, could result in damage to the immediately adjacent structure, which would reduce structural integrity of the airplane.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–54A049, Revision 1, dated February 7, 1995. Revision 1 differs from the original issue of the service bulletin, which was referenced in the existing AD as the appropriate source of service information. Revision 1 describes procedures for initial and repetitive visual inspections to detect cracking of the outboard and inboard surfaces of the upper spar angles on the number 1 and number 3 wing pylons, including the critical areas of the spar angle. Revision 1 also revises the effectivity to exclude one airplane and to add three additional airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 94–26–11 to require initial and repetitive visual inspections to detect cracking of the outboard and inboard surfaces of the upper spar angles on the number 1 and number 3 wing pylons, in accordance with the alert service bulletin described previously. Cracked upper spar angles are required to be repaired in accordance with a method approved by the FAA.

This AD also requires that operators report the results of the initial and repetitive visual inspections to the FAA. In concert with the manufacturer's ongoing investigation, the FAA intends to use these reports to develop, review, and approve corrective action that would terminate the need for the repetitive inspections required by this AD. Therefore, depending upon the results of these reports, further corrective action may be warranted.

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

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–21–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 removing amendment 39–9106 (59 FR 66669, December 28, 1994), and by adding a new airworthiness directive (AD), amendment 39–9167, to read as follows:

95–04–15 McDonnell Douglas: Amendment 39–9167. Docket 95–NM–21–AD. Supersedes AD 94–26–11, Amendment 39–9106.

Applicability: Model MD–11 series airplanes having manufacturer's fuselage number 447 through 573 inclusive, and 575 through 578 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or

repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the airplane, accomplish the following:

(a) For airplanes listed in McDonnell Douglas MD–11 Alert Service Bulletin A54–49, dated December 2, 1994, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 30 days after January 12, 1995 (the effective date of AD 94–26–11, amendment 39–9106), unless accomplished previously within the last 30 days prior to January 12, 1995, perform a visual inspection to detect cracking of the outboard and inboard surfaces of the upper spar angles, part numbers AUB7519–1/–2, on the number 1 and number 3 wing pylons, in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–49, dated December 2, 1994.

(2) At the applicable time specified in either paragraph (a)(2)(i) or (a)(2)(ii) of this AD, submit a report of the results (both positive and negative findings) of the inspection required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; or fax the report to (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(i) For airplanes on which the inspection required by paragraph (a) of this AD is accomplished after January 12, 1995: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(ii) For airplanes on which the inspection required by paragraph (a) of this AD is accomplished prior to January 12, 1995: Submit the report within 10 days after January 12, 1995.

(b) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–54A049, Revision 1, dated February 7, 1995, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD.

(1) Within 30 days after the effective date of this AD, or within 60 days after accomplishing the visual inspection required by paragraph (a) of this AD, whichever occurs later, perform a visual inspection to detect cracking of the outboard and inboard surfaces of the upper spar angles, part numbers AUB7519–1/–2, on the number 1 and number 3 wing pylons, in accordance with McDonnell Douglas Alert Service Bulletin MD11–54A049, Revision 1, dated February 7, 1995. Repeat this inspection thereafter, prior to further flight, following each incident of excessive maneuver, turbulence overload (as defined in MD–11 Aircraft Maintenance Manual, chapter 05–51–01), or hard landing (as defined in MD–11 Aircraft Maintenance Manual, chapter 05–51–03).

(2) At the applicable time specified in either paragraph (b)(2)(i) or (b)(2)(ii) of this AD, submit a report of the results (both positive and negative findings) of the inspections required by paragraph (b) of this AD to the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; or fax the report to (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(i) For airplanes on which the inspection required by paragraph (b) of this AD is accomplished after the effective date of this AD: Submit the report within 10 days after performing any of the inspections required by paragraph (b) of this AD.

(ii) For airplanes on which the inspection required by paragraph (b) of this AD is accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(c) If no cracking is detected during the inspections required by paragraphs (a) and (b) of this AD, repeat the inspection required by paragraph (b) of this AD thereafter at intervals not to exceed 60 days or 300 landings, whichever occurs first, in accordance with McDonnell Douglas Alert Service Bulletin MD11–54A049, Revision 1, dated February 7, 1995.

(d) If any cracking is detected during the inspection required by either paragraph (a) or (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

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

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

(f) 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.

(g) The inspections shall be done in accordance with McDonnell Douglas MD–11 Alert Service Bulletin MD11–54A049, Revision 1, dated February 7, 1995, and McDonnell Douglas MD–11 Alert Service Bulletin A54–49, dated December 2, 1994. The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–54A049, Revision 1, dated February 7, 1995, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of McDonnell Douglas MD–11 Alert Service Bulletin A54–49, dated December 2, 1994, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of January 12, 1995 (59 FR 66669, December 28, 1994). Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 17, 1995.

Issued in Renton, Washington, on February 23, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4983 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–ASO–24]

Amendment to Class D and Class E Airspace; Fort Campbell, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a final rule that was published in the **Federal Register** on December 21, 1994, Airspace Docket No. 94–ASO–24. The December 21, 1994, final rule corrected the geographic positions of the Sabre Army Heliport and the designations of the Fort Campbell, KY, Class D and Class E airspace areas.

EFFECTIVE DATE: 0901 UTC, March 30, 1995.

FOR FURTHER INFORMATION CONTACT:

Michael J. Powderly, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 94–31309, Airspace Docket No. 94–ASO–24, published on December 21, 1994 (59 FR 65705), corrected the geographic position coordinates of the Sabre Army Heliport and the designations of the Class D and Class E airspace areas at Fort Campbell, KY. An error was discovered in the geographic position coordinates of the Sabre Army Heliport. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic position coordinates for the Class D and Class E airspace areas at Fort Campbell, KY, as published in the **Federal Register** on December 21, 1994 (59 FR 65705), (**Federal Register** Document 94–31309; page 65706, column 3), are corrected as follows:

§ 71.71 [Corrected]

* * * * *

ASO KY D Fort Campbell, KY [Corrected]

By removing ''(Lat. 36°34′24″ N, long. 87°28′50″ W)'' and substituting ''(Lat. 36°34′14″ N, long. 87°28′50″ W)''.

* * * * *

ASO KY E5 Fort Campbell, KY [Corrected]

By removing ''(Lat. 36°34′24″ N, long. 87°28′50″ W)'' and substituting ''(Lat. 36°34′14″ N, long. 87°28′50″ W)''.

* * * * *

Issued in College Park, Georgia, on February 10, 1995.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–4775 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 813, 905, 908, and 913

[Docket No. R–95–1747; FR–3730–F–03]

RIN 2577–AB47

Electronic Transmission of Required Family Data for Public Housing, Indian Housing, and the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule requires all housing agencies (HAs) to submit certain data electronically to HUD in a HUD prescribed format. For HAs that are not already automated or who determine that automation is not cost-effective, transmission of the data through the use of a service bureau is permitted. Electronic transmission is necessary because the manual submission of HUD forms has become a burden to HAs and HUD.

This rule applies to projects administered under the public housing, Indian housing, and Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs. A similar rule was issued with respect to multifamily subsidized projects administered under programs subject to the oversight of the Assistant Secretary for Housing-Federal Housing Commissioner (58 FR 61017), which was codified at 24 CFR part 208.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: For Technical Information—Katherine M. Dillon, Director, Information Services Division, Office of Public and Indian Housing, Room 4248, telephone (202) 708–5285. For Public Housing program information—Edward C. Whipple, Director, Occupancy Division, Office of Public and Indian Housing, Room 4206, telephone (202) 708–0744. For Native American program information—Ed Fagan, Office of Native American Programs, Room B–133, telephone (202) 755–0088. These people may be reached at the Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this rule have been reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and assigned approval number 2577–0083, which expires on August 31, 1997.

II. Background

On Thursday, October 6, 1994, the Department published a proposed rule that would require all housing agencies (HAs) to submit certain data electronically to HUD in a HUD prescribed format.

Housing agencies have been submitting data forms to HUD for each family assisted under the public housing, Indian housing, and Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation Programs. Approximately 85 percent of reporting agencies (3,655 HAs) have been submitting paper forms. This extensive processing of paper forms has become a burden to the HAs as well as to HUD.

To reduce the cost to the Department of processing this information and to improve its accuracy, HUD issued the proposed rule to require that this information be submitted electronically. The change is expected to contribute significant savings to the Department, in a time when budget constraints demand such savings. The time spent by HAs in initiating electronic collection and transmission and making corrections to the electronic data submissions will be offset by future savings in the reexamination and reporting process, as well as increased accuracy and speed associated with the admission, reexamination and reporting processes, and the reduced number of HUD adjustments and paperwork required by these adjustments.

The proposed rule requires HAs to submit data electronically via telephone modem, rather than through tape, diskette, or paper. However, the rule also provides that the Department may approve transmission of the data by tape or diskette where the Department determines that the cost of telephonic transmission would be excessive. For HAs that are not already automated or who determine that automation is not cost effective, the rule would permit transmission of the data through the use of a service bureau.

In recognition of the difficulty some HAs may have in conversion to electronic submission of data, the proposed rule permits HUD Field Offices to grant extensions of time beyond the stated implementation date for commencement of electronic submission under certain circumstances.

This final rule adopts the proposed rule, as published, in its entirety, with the addition of a reference to Indian housing programs in § 908.108(a).

III. Response to Public Comments

The Department received 16 comments on the proposed rule. The commentors consisted of HAs and two professional housing associations. Most respondents expressed general support for HUD's implementation of the rule. The following are major concerns expressed by the commentors:

The most frequent category of concern was raised by small HAs (100 units or less in management), requesting that they be excluded from the requirement

to submit family data electronically. They stated that their size and limited staff and financial resources made compliance burdensome, and they suggested two solutions. The first was to discontinue the submission of data completely; the second was to continue submission of paper reports as is currently the practice.

While the Department is aware of the unique constraints faced by small HAs in reporting family data, they should be aware that they constitute a sizeable portion of the HA universe and have valuable resident family information that should be shared. HUD's position in this matter is that small HAs unable to automate their reporting systems should seek out, and contract with, organizations that provide data processing services (Service Bureaus). Service costs should be manageable, since small HAs are only required to report on a quarterly basis. A service bureau need not be physically located in the city where the housing agency is located, since paper records may be mailed to a service bureau, which may then transmit the records electronically to HUD.

Several HAs suggested that if HUD provides the software for automating family data reporting, the requirement would be reasonable. Along these lines, other HAs and a housing organization indicated a willingness to send data electronically only if HUD provides equipment and software or pays for contracting with service bureaus.

The Department is aware that there are vendors available that can assist HAs in automating the collection and reporting of family data. These vendors also can help HAs to achieve this automation in the context of HA automation of other functions. The Department strongly encourages HAs to investigate these options. HUD also is considering development of a software package that is directed primarily for the smaller HAs. This package would automate only the collection and reporting of family data, not the other HA functions. This software package would be provided free of charge. The Department will notify HAs by letter if this software package becomes available.

The cost of automation hardware is an eligible operating expense and can be included in the operating budget. Automating this management function also is an allowable expense under the Comprehensive Improvement Assistance Program and the Comprehensive Grant Program.

Another organization suggested that the Section 8 Program Administrative Fee be increased to cover the cost of automation. In the Section 8 Program, automation may be paid from ongoing Administrative Fees or the Operating Reserve. The Department, however, has no plans to increase Administrative Fees for the sole purpose of automation.

Several HAs recommended that HUD provide training and technical assistance in the formatting and transmission of family data to the Department's central processing facility. Plans are underway to develop a video tape and expanded training materials specifically for this purpose.

One organization recommended that this automation effort be more closely coordinated with the HUD automated database program TRACS—the data collection system used for programs administered by the Assistant Secretary for Housing—Federal Housing Commissioner. Unfortunately, the electronic data formats for the Forms HUD–50058 and HUD–50058–FSS, which are used for the programs that are covered by this rule, and for the Form HUD–50059, which are the subject of TRACS, are unique and will not accommodate a one-for-one correspondence. While similar automation hardware may be used to process a variety of management information reports, software specifically designed for the above forms is required.

A number of HAs recommended that the time periods required for the implementation of the rule be extended in the following manner:

Automated agencies (converting to telephonic electronic transmission) from 120 days after publication of the final rule to 12 months.

Non-automated agencies (planning to automate) from 365 days after publication of the final rule to 24 months.

While HUD understands the obstacles and concerns facing agencies in this automation effort, the intent of the rule is to decrease the reporting burden for HAs while at the same time, reduce costs to the Department in a time when budget constraints demand such savings. HUD is of the opinion that the time frames originally set in the rule are realistic. Special situations may be directed to the HUD Field Office for consideration.

One HA located in a remote area of Alaska requested approval of transmission via tape or diskette, since telephonic service was undependable. In these instances HAs may utilize a Service Bureau or, upon prior approval from HUD, transmit via tape or diskette.

IV. Other Matters

A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(o) of the HUD regulations, the policies and procedures contained in this rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, *Federalism*, has determined that the policies contained in this rule 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. Specifically, this rule is directed to housing agencies that operate HUD-assisted housing, whose functions and authority remain unchanged. It merely changes the format of data submitted to HUD to make its transmission more accurate and efficient. It will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the rule is not subject to review under the order.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule changes the way in which the data is transmitted to HUD, and all costs associated with implementation of the electronic transmission will be considered allowable project operating costs, the rule is not expected to have a significant economic impact.

E. Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) under Executive Order 12866 and the Regulatory Flexibility Act.

F. Catalog

The Catalog of Federal Domestic Assistance numbers for the programs covered by this rule are 14.850, 14.855, 14.856, and 14.857.

List of Subjects

24 CFR Part 813

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Homeownership, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 908

Computer technology—automatic data processing, data processing, electronic data processing, Subsidies—grant programs, Rent subsidies.

24 CFR Part 913

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, title 24, chapters VIII and IX, of the Code of Federal Regulations are amended by amending parts 813, 905, and 913, and by adding a new part 908, consisting of §§ 908.101 through 908.112, as follows:

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

1. The authority citation for part 813 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 1437n, and 3535(d).

2. In § 813.109, a new paragraph (c) is added, to read as follows:

§ 813.109 Initial determination, verification, and reexamination of family income and composition.

* * * * *

(c) See 24 CFR part 908 for requirements for transmission of data to HUD.

* * * * *

PART 905—INDIAN HOUSING PROGRAMS

3. The authority citation for part 905 continues to read as follows:

Authority: 25 U.S.C. 450e(b), 42 U.S.C. 1437a, 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

4. In § 905.315, paragraphs (a) (2) and (3) are redesignated as paragraphs (b) and (c), and a new paragraph (d) is added, to read as follows:

§ 905.315 Initial determination, verification, and reexamination of family income and composition.

* * * * *

(d) See 24 CFR part 908 for requirements for transmission of data to HUD.

5. A new part 908, consisting of §§ 908.101 through 908.112, is added to read as follows:

PART 908—ELECTRONIC TRANSMISSION OF REQUIRED FAMILY DATA FOR PUBLIC HOUSING, INDIAN HOUSING, AND THE SECTION 8 RENTAL CERTIFICATE, RENTAL VOUCHER, AND MODERATE REHABILITATION PROGRAMS

Sec.

Authority: 42 U.S.C. 1437f, 3535(d), 3543, 3544, and 3608a.

§ 908.101 Purpose.

The purpose of this part is to require Housing Agencies (HAs) that operate public housing, Indian housing, or Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation programs to electronically submit certain data to HUD for those programs. This electronically submitted data is required for HUD Forms HUD–50058, Family Report, and HUD–50058–FSS, Family Self-Sufficiency Addendum.

§ 908.104 Requirements.

(a) *Automated HAs.* Housing agencies that currently use automated software packages to transmit Forms HUD–50058 and HUD–50058–FSS information by tape or diskette to the Department's data processing contractor must convert to telephonic electronic transmission of that data in a HUD specified format by June 30, 1995.

(b) *Nonautomated HAs.* Housing agencies that currently prepare and transmit the HUD–50058 and HUD–50058–FSS information to HUD paper must:

(1) Complete a vendor search and obtain either:

(i) The necessary hardware and software required to develop and maintain an in-house automated data processing system (ADP) used to generate electronic submission of the data for these forms via telephonic network; or

(ii) A service contract for the operation of an automated system to generate electronic submission of the data for these forms via telephonic network;

(2) Complete their data loading; and

(3) Begin electronic transmission by March 2, 1996.

(c) *Electronic transmission of data.* Electronic transmission of data consists of submission of all required data fields (correctly formatted) from the forms HUD–050058 and HUD–50058–FSS telephonically, in accordance with HUD instructions. Regardless of whether an HA obtains the ADP system itself or contracts with a service bureau to provide the system, the software must be periodically updated to incorporate changes or revisions in legislation, regulations, handbooks, notices, or HUD electronic transmission data format requirements.

(d) *Service contract.* HAs that determine that the purchase of hardware and/or software is not cost effective may contract out the electronic data transmission function to organizations that provide such services, including, but not limited to the following organizations: local management associations and management agents with centralized facilities. HAs that contract out the electronic transmission function must retain the ability to monitor the day-to-day operations of the project at the HA site and be able to demonstrate the ability to the relevant HUD Field Office.

(e) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Department may approve transmission of the data by tape or diskette if it determines that the cost of telephonic transmission would be excessive.

[Approved by the Office of Management and Budget under control number 2577–0083]

§ 908.108 Cost.

(a) *General.* The costs of the electronic transmission of the correctly formatted data, including either the purchase and maintenance of computer hardware or software, or both, the cost of contracting for those services, or the cost of

centralizing the electronic transmission function, shall be considered Section 8 Administrative expenses, or eligible public and Indian housing operating expenses that can be included in the public and Indian housing operating budget. At the HA's option, the cost of the computer software may include service contracts to provide maintenance or training, or both.

(b) *Sources of funding.* For public and Indian housing, costs may be covered from operating subsidy for which the HA is already eligible, or the initial cost may be covered by funds received by the HA under HUD's Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant Program (CGP). For Section 8 programs, the costs may be covered from ongoing administrative fees or the Section 8 operating reserve.

§ 908.112 Extension of time.

The HUD Field Office may grant an HA an extension of time, of a reasonable period, for implementation of the requirements of § 908.104, if it determines that such electronic submission is infeasible because of one of the following:

(a) Lack of staff resources;

(b) Insufficient financial resources to purchase the required hardware, software or contractual services; or

(c) Lack of adequate infrastructure, including, but not limited to, the inability to obtain telephone service to transmit the required data.

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING PROGRAM

6. The authority citation for part 913 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437d, 1437n, and 3535(d).

7. In § 913.109, a new paragraph (c) is added, to read as follows:

§ 913.109 Initial determination, verification, and reexamination of family income and composition.

* * * * *

(c) See 24 CFR part 908 for requirements for transmission of data to HUD.

* * * * *

Dated: February 21, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–5047 Filed 3–1–95; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–94–010]

RIN 2115–AE46

Special Local Regulations; Citizen Cup Defender Semi-Final and Final Series, Louis Vuitton Cup Challenger Semi-Final and Final Series, and America's Cup Match Races; San Diego Bay and Mission Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for that portion of the International America's Cup Class (IACC) Citizen Cup Defender Semi-Final and Final Series, Louis Vuitton Cup Challenger Semi-Final and Final series, and America's Cup Match Races that are being conducted in the waters of the Pacific Ocean adjacent to San Diego Bay and Mission Bay on the following dates: March 18, 1995 through April 2, 1995; April 9, 1995 through April 23, 1995; and May 6, 1995 through May 27, 1995, inclusive. These regulations are necessary to provide for the safety of life, property, and navigation on the navigable waters of the United States during the scheduled events.

EFFECTIVE DATE: This rule becomes effective at 10 a.m. PST on March 18, 1995 and terminates at 7 p.m. PDT on May 27, 1995 unless cancelled earlier by the District Commander.

FOR FURTHER INFORMATION CONTACT: Lieutenant Cam Lewis, America's Cup Patrol; telephone number (619) 557–2920.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant Cam Lewis, Project Officer for the Patrol Commander, and Lieutenant Commander Craig Juckniess, Project Attorney, Eleventh Coast Guard District Legal Office.

Regulatory History

On December 16, 1994, the Coast Guard published a notice of proposed rulemaking for these regulations in the **Federal Register** (59 FR 64996). The comment period ended on January 30, 1995. The Coast Guard received no comments on the proposal. A public hearing was not requested and no hearing was held.

Background and Purpose

The event prompting a need for these Special Local Regulations is the IACC Citizen Cup and Louis Vuitton Cup Semi-Finals and Finals, and the America's Cup Match Races which will be conducted in the San Diego area on several series of dates during the period mid-March through May 1995. In addition, races in the Citizen Cup Defender Selection Series and Louis Vuitton Cup Challenger Selection Series are being held on several series of dates during the period January through mid-March 1995; Special Local Regulations establishing measures promoting the safety of these races are the subject of separate rulemaking (59 FR 64850, December 16, 1994).

These regulations are intended to promote safe navigation on the waters of San Diego Bay, Mission Bay, and the IACC race venue during the IACC Citizen Cup, Louis Vuitton Cup, and America's Cup Match Races by controlling the traffic entering, exiting, and traveling within these waters. The anticipated concentration of spectator and participant vessels associated with these races poses a safety concern, which is addressed in these special local regulations.

Within the geographic area of applicability of these proposed special local regulations, speed limits and operating requirements have been established for orderly passage to and from the IACC shore facilities and race venue.

Speed limits and operating requirements are also established for other vessel traffic operating within the regulated areas during times when most IACC and spectator vessels are expected to transit the harbors. During these same times, vessels shall not operate exclusively under sail within the regulated areas.

On each specified race date, these regulations will be in effect in San Diego Bay and Mission Bay during two periods: between the hours of 10 a.m. and 12 noon, and again in the afternoon for a two-hour period which will fall between 2:30 p.m. and 7 p.m. Selection of the afternoon regulatory period will depend on the time of termination of race activities for that date. Notice of commencement and termination of the afternoon regulatory period will be made by Broadcast Notice to Mariners; a 15-minute advance notice of commencement of the afternoon regulatory period will also be broadcast.

The nature of the winner selection process and other circumstances may dictate that races will not actually be conducted on dates specified as race

dates. In the event of cancelation or postponement of races scheduled for a particular date, the Patrol Commander's election not to implement these regulations on that date will be announced via Broadcast Notice to Mariners.

The regulations also provide for a one-way traffic pattern and a five-knot speed limit. These requirements will be activated by the Patrol Commander when necessary to ensure the safety of navigation. Activation of these additional regulations will be announced by patrol vessels on scene and by Broadcast Notice to Mariners.

Additionally, several non-anchorage areas are established for the period of these regulations to promote smooth traffic flow and ensure access to docks and piers.

These Special Local Regulations will be enforced for that portion of the race venue which is located within the navigable waters of the United States, to minimize navigational dangers and ensure the safety of vessels participating in and viewing the races. Nonobligatory guidelines are included for that portion of the race venue which falls outside the navigable waters of the United States.

All vessels which fail to comply with these regulations while operating within the regulated areas during the regulatory periods are subject to citation for failure to comply with these regulations, and subject to the penalties presented in 33 U.S.C. 1236 and 33 CFR 100.50.

Regulatory Evaluation

This regulation is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the Department of Transportation regulatory policies and procedures is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632). Because the Coast Guard expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environmental Assessment

The environmental impact of this rulemaking has been analyzed in the Environmental Assessment (EA) prepared by America's Cup 1995, the organizing committee of the races, in connection with its application for a Coast Guard regatta permit. A copy of the EA has been made a part of the public docket and is available for review at the Eleventh Coast Guard District Office at the address listed under **ADDRESSES.**

The Coast Guard has reviewed the EA submitted by the sponsors of the event, considered the environmental impact of this regulation and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Finding of No Significant Impact (FONSI) has been prepared in connection with the regatta permit, has been made part of the public docket, and is available for review at the address listed under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

In consideration of the foregoing, the Coast Guard is amending Part 100 of title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T11–004 is added to read as follows:

§ 100.35T11–004 Special Local Regulations; San Diego Bay, Mission Bay and IACC Race Venue, CA.

(a) *Regulated areas.* This regulation pertains to specified portions of San Diego Bay, Mission Bay and the waters of the Pacific Ocean immediately offshore of San Diego. Within these waters, there are several areas with specific regulations. The regulated areas are defined by the following:

(1) *West San Diego Bay.* (i) The following area is subject to the regulations delineated below—The water area seaward of a line connecting the following points, beginning at:

32°43′27.0″ N 117°12′48.0″ W (Harbor Island Light, LLNR 1700); thence to

32°42′51.0″ N 117°12′32.5″ W (North Island light ''N'', LLNR 1705); thence along the shoreline to

32°40′00.0″ N 117°13′24.0″ W (Zuniga Jetty Light ''Z'', LLNR 1520); thence to

32°39′12.0″ N 117°13′18.0″ W; thence to

32°37′18.0″ N 117°14′42.0″ W (San Diego Approach ''SD'', LLNR 1485); thence to

32°40′00.0″ N 117°15′40.0″ W; thence to

32°40′00.0″ N 117°14′48.0″ W; thence to

32°39′54.0″ N 117°13′24.0″ W (point Loma Light, LLNR 5); thence returning along the shoreline to the point of beginning.

Datum: NAD 83

(ii) The following area (the West Basin) is excluded from this regulated area—The waters shoreward of a line connecting the following points, beginning at:

32°43′30.0″ N 117°12′48.0″ W; thence to

32°43′20.0″ N 117°13′00.0″ W.

Datum: NAD 83

(2) *Non-anchorage areas.* The following areas are non-anchorage areas:

(i) NA–1: The waters bounded by a line connecting the following points, beginning at:

32°41′17.8″ N 117°13′56.7″ W; thence to

32°41′17.4″ N 117°14′01.0″ W; thence to

32°41′32.0″ N 117°14′03.8″ W; thence to

32°41′34.5″ N 117°13′58.5″ W; thence returning to the point of beginning.

Datum: NAD 83

(ii) NA–2: The waters bounded by a line connecting the following points, beginning at:
32°41′51.3″ N 117°13′57.5″ W; thence to
32°41′56.4″ N 117°14′12.9″ W; thence to
32°42′10.5″ N 117°14′04.0″ W; thence to
32°42′18.0″ N 117°14′00.0″ W (Entrance Range Front Light, LLNR 1500); thence to
32°42′12.9″ N 117°13′50.0″ W; thence returning to the point of beginning.

Datum: NAD 83

(iii) NA–3: The waters bounded by a line connecting the following points, beginning at:
32°42′41.0″ N 117°13′22.0″ W; thence to
32°42′52.8″ N 117°13′24.6″ W; thence to
32°42′55.0″ N 117°13′23.0″ W; (Shelter Island Light ''S'', LLNR 1640); thence to
32°42′49.0″ N 117°13′13.0″ W; thence returning to the point of beginning.

Datum: NAD 83

(iv) NA–4: The waters bounded by a line connecting the following points, beginning at:
32°42′55.2″ N 117°13′04.0″ W; thence to
32°43′05.7″ N 117°13′04.0″ W; thence to
32°43′19.7″ N 117°13′00.0″ W; thence to
32°43′24.5″ N 117°12′51.8″ W; thence to
32°43′08.1″ N 117°12′58.0″ W; thence to
32°42′58.1″ N 117°12′54.1″ W; thence returning to the point of beginning.

Datum: NAD 83

(v) NA–5: The waters bounded by a line connecting the following points, beginning at:
32°43′00.8″ N 117°11′23.0″ W; thence to
32°43′01.0″ N 117°10′36.0″ W (south west corner of ''B Street'' Pier); thence to
32°42′46.0″ N 117°10′33.0″ W (the shoreline to the north west corner of ''G Street'' Pier); thence to
32°42′46.2″ N 117°10′58.19″ W; thence returning to the point of beginning.

Datum: NAD 83

(3) *Mission Bay.* The following area is subject to the regulations delineated below—The water area between the COLREGS Demarcation Line described in section 80.1106 of this chapter and seaward of the West Mission Bay Bridge, described more particularly as the water area bounded by the COLREGS Demarcation Line, thence along the shoreline to:
32°46′07.3″ N 117°14′36.7″ W; thence to
32°40′00.0″ N 117°14′27.8″ W; thence along the shoreline to the COLREGS Demarcation Line.

Datum: NAD 83

(4) *IACC Offshore Race Venue.* The following area is subject to the regulations delineated below—The waters of the Pacific Ocean bounded by a line connecting the following points, beginning at:
32°37′18.0″ N 117°14′42.0″ W (San Diego approach ''SD''); thence to
32°34′06.0″ N 117°17′00.0″ W; thence to
32°35′12.0″ N 117°22′48.0″ W; thence to
32°41′00.0″ N 117°26′00.0″ W; thence to
32°43′18.0″ N 117°20′00.0″ W; thence to
32°43′18.0″ N 117°17′00.0″ W; thence returning to the point of beginning.

Datum: NAD 83

(b) *Definitions*—(1) *Unaffiliated vessels.* All vessels that are not registered with the America's Cup '95 governing body (AC'95) or the Challenger of Record Committee (CORC) as a participant, and not designated as an AC'95 Race Vessel, A CORC Race Vessel, or an Official Vessel by the Coast Guard Patrol Commander are unaffiliated vessels.

(2) *Participant.* Any IACC race boat, IACC chase boat or IACC tender that is registered with AC'95 or CORC while in performance of its official function relative to a given race.

(3) *AC'95 or CORC Race Vessels.* Any vessel designated by AC'95 or CORC and approved by the U.S. Coast Guard Patrol Commander that has been given official duties in support of the Citizen Cup, Louis Vuitton Cup, or America's Cup Match Races. These vessels include, but are not limited to, mark boats, stake boats, and umpire boats.

(4) *Official Vessels.* Official Vessels are all U.S. Coast Guard, U.S. Coast Guard Auxiliary, state and local law enforcement vessels, and civilian vessels designated by the Coast Guard Patrol Commander and flying the official patrol vessel flag. The official patrol vessel flag is a white rectangular flag emblazoned with the words ''America's Cup '95'' and depicting two sailing vessels racing beneath the America's Cup trophy. The civilian vessels may include, but are not limited to, AC'95 and CORC Crowd Control Vessels and media vessels. AC'95 and CORC Crowd Control Vessels are 20-foot and 23-foot Bayliner power boats, identified by the word ''PATROL'' followed by a number, printed in large letters on both sides of the vessel. AC'95 and CORC Crowd Control Vessels will fly the America's Cup patrol flag and, if required in performance of their duties, operate a yellow and red flashing light.

(5) *Patrol Commander.* A Patrol Commander has been designated by the Commander, Eleventh Coast Guard District. The Patrol Commander has the authority to control the movement of all vessels operating in the regulated areas and may suspend the regatta at any time it is deemed necessary for the protection of life and property.

Note: The Patrol Commander may be contacted during the regulatory periods on VHF/FM Channel 16 (156.8 MHZ) or Channel 22 (157.1 MHZ) by calling ''Coast Guard Patrol Commander'' or ''Coast Guard San Diego.''

(6) *Race dates.* The following dates are race dates: March 18, 1995 through April 2, 1995; April 9, 1995 through April 23, 1995; and May 6, 1995 through May 27, 1995, inclusive.

(c) *Special Local Regulations*—(1) *West San Diego Bay.* The following regulations are in effect between the hours of 10 a.m. and 12 noon each race date. Additionally, the following regulations are in effect for a period of approximately two hours the afternoon of each race date, and will be implemented for a designated period between 2:30 p.m. and 7 p.m. The time of commencement of this afternoon regulatory period will be determined on each rate date, and notice of implementation will be provided by Broadcast Notice to Mariners. A 15-minute advance notice of commencement of the afternoon regulatory period will also be made by Broadcast Notice to Mariners. Notice of the termination of the afternoon regulatory period each race date will be made by Broadcast Notice to Mariners, as well. The Patrol Commander may elect not to implement the regulations on those race dates when the races are postponed or canceled; announcement to that effect will be made by Broadcast Notice to Mariners.

(i) Participant vessels shall be operated under auxiliary power or tow when transiting San Diego Bay. Participants shall not operate their vessels exclusively under sail within San Diego Bay without the express permission of the Patrol Commander to do so. IACC boats may operate with mainsail set while being towed.

(ii) Participant and unaffiliated vessels shall not exceed a speed of ten knots.

(iii) Unaffiliated sail vessels shall operate under auxiliary power or tow. Motor-sailing with mainsail only will be allowed.

(iv) When transiting through the regulated areas is necessary, unaffiliated vessels shall make expeditious transit and shall not impede or obstruct the orderly flow of vessel traffic.

(v) All vessels shall follow the instructions of Coast Guard and Coast Guard Auxiliary vessels.

(vi) No vessel shall anchor in a non-anchorage area specified in paragraph (a)(2) of this section, except in the case of an emergency. If equipped with a VHF/FM radio, the vessel shall immediately notify the Coast Guard on Channel 16 (156.8 MHZ) of the existence of any emergency.

(2) *Mission Bay.* The following regulations are in effect between the hours of 10 a.m. and 12 noon each race date. Additionally, the following regulations are in effect for a period of approximately two hours the afternoon of each race date, and will be implemented for a designated period between 2:30 p.m. and 7 p.m. The time of commencement of this afternoon regulatory period will be determined on each race date, and notice of implementation will be provided by Broadcast Notice to Mariners. A 15-minute advance notice of commencement of the afternoon regulatory period will also be made by Broadcast Notice to Mariners. Notice of the termination of the afternoon regulatory period each race date will be made by Broadcast Notice to Mariners, as well. The Patrol Commander may elect not to implement the regulations on those race dates when the races are postponed or canceled; announcement to that effect will be made by Broadcast Notice to Mariners.

(i) Participant and unaffiliated vessels shall not exceed five knots.

(ii) Participant and unaffiliated sail vessels shall operate under auxiliary power or tow. Motor-sailing with mainsail only will be allowed.

(iii) When transiting through the regulated area is necessary, unaffiliated vessels shall make expeditious transit and shall not impede or obstruct the orderly flow of vessel traffic.

(iv) All vessels shall follow the instructions of Coast Guard and Coast Guard Auxiliary vessels.

(3) *IACC Offshore Race Venue.* The following regulations are in effect between the hours of 10 a.m. and 5:30 p.m. each race date on those waters within the IACC Offshore Race Venue which fall within the navigable waters of the United States, *i.e.*, those waters within three nautical miles (3nm) of the baseline from which the territorial sea is measured. The Patrol Commander may elect not to implement the regulations on those race dates when the races are postponed or canceled; announcement to that effect will be made by Broadcast Notice to Mariners.

(i) Unaffiliated vessels shall remain outside the course perimeter, as marked by the AC'95 or CORC Race Vessels and Official Vessels.

(ii) All vessels shall follow the instructions of Coast Guard and Coast Guard Auxiliary vessels.

Note: The regulations specified in this paragraph apply only within the navigable waters of the United States. In all waters within the IACC Race Venue which fall outside the navigable waters of the United States, during the specified dates and times, the following nonobligatory guidelines apply:

(A) All unaffiliated vessels should remain clear of the race venue and avoid interfering with any participant, AC'95 or CORC Race Vessel, or Official Vessel. Interference with race activities may constitute a safety hazard warranting cancelation or termination of all or part of the race activities by the Patrol Commander.

(B) Any unauthorized entry within the race course perimeter, as marked by the AC'95 or CORC Race Vessels and Official Vessels, by unaffiliated vessels constitutes a risk to the safety of marine traffic. Such entry will constitute a factor to be considered in determining whether a person has operated a vessel in a negligent manner in violation of 46 U.S.C. 2302.

(4) *One-way traffic and five-knot speed limit.* The Patrol Commander may implement one-way traffic patterns and a five-knot speed limit in the regulated areas or portions thereof if the Patrol Commander deems it necessary to ensure safe navigation. Notion of one-way traffic and a five-knot speed limit shall be made by Broadcast Notice to Mariners. If one-way traffic patterns are implemented, participant and unaffiliated vessels are required to transit the applicable regulated area(s) in either an inbound direction (proceeding into port) or an outbound direction (proceeding to sea). No traffic in any direction other than inbound or outbound) (*i.e.*, cross traffic) will be permitted in the area of implementation. If a five-knot speed limit is implemented, all traffic entering or exiting the harbors will be required to make a speed of no more than five knots through the water. If one-way traffic or a five-knot speed limit is implemented, all participant and unaffiliated vessels shall also abide by all other nonconflicting provisions contained within these special local regulations associated with the regulated area.

(d) *Effective dates.* These regulations become effective 10 a.m. PST on March 18, 1995 and terminate at 7 p.m. PDT on May 27, 1995 unless cancelled earlier by the District Commander.

Dated: February 16, 1995.

R.A. Appelbaum,

Rear Admiral, U.S. Coast Guard,

Commander, Eleventh Coast Guard District.

[FR Doc. 95–5170 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 485 and 486

[BPD–798–CN]

Medicare Program; Providers and Suppliers of Specialized Services—Technical Amendments; Corrections

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction.

SUMMARY: **Federal Register** document No. 95–485, beginning on page 2325 of the issue of Monday, January 9, 1995, redesignated several subparts of 42 CFR part 405 of the HCFA regulations under part 485 and a new part 486. The redesignation required correction of several references to the previous designation of certain sections. This notice corrects an error in one of those reference corrections, and an error in a paragraph heading.

EFFECTIVE DATE: February 8, 1995.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 690–6383.

Corrections

1. On page 2328, column 2, in § 485.717, the heading for paragraph (b), ''Standard: Arrangements for social or rehabilitation services.'' is corrected to read ''Standard: Arrangements for social or vocational adjustment services.''.

§ 484.38 [Corrected]

2. On page 2329, column 3, the amendatory language for § 484.38 under item b. is corrected to read as follows:

b. In § 484.38, ''§§ 405.1717 through 405.1719, 405.1721, 405.1723, and 405.1725 of this chapter'' is revised to read ''§§ 485.711, 485.713, 485.715, 485.719, 485.723, and 485.727 of this chapter''.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774,

Medicare—Supplementary Medical Insurance Program)

Dated: February 16, 1995.

Neil J. Stillman,

Deputy Assistant Secretary for Information, Resources Management.

[FR Doc. 95–4712 Filed 3–1–95; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7119

[AZ–930–1430–01; AZA–12956]

Revocation of Two Secretarial Orders Dated April 23, 1943; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two Secretarial Orders dated April 23, 1943, in their entirety. One withdrew 3,666.08 acres of National Forest System lands and the other withdrew 35.34 acres of public land, totaling 3,701.42 acres, withdrawn for the Bureau of Reclamation's proposed Snowflake Project. The withdrawals are no longer needed and the revocation is needed to permit disposal of the land through land exchange. This action will open 2,791.99 acres to mining and to such forms of disposition as may by law be made of National Forest System land unless closed by overlapping withdrawals or temporary segregations of record. The remaining 874.09 acres of National Forest System lands are within an overlapping withdrawal and consequently will remain closed to mining and to such forms of disposition as may by law be made of National Forest System land. The 35.34 acres of public land will be opened to surface entry and mining unless closed by overlapping withdrawals or temporary segregations of record. All of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0509.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated April 23, 1943, which withdrew the following described National Forest System lands, is hereby revoked in its entirety:

Gila and Salt River Meridian

Sitgreaves National Forests

T. 9 N., R. 22 E.,
Sec. 2, lot 5 (formerly lot 1), lot 6 (formerly lot 2), lots 11 and 12 (formerly S½NE¼), and SE¼;
Sec. 3, lot 3, lot 6 (formerly lot 2), lot 7 (formerly SW¼NE¼), SE¼NW¼, E½ lot 11 (formerly E½SW¼SE¼), and lot 12 (formerly SE¼SE¼);
Sec. 10, E½NE¼, NW¼NE¼, E½NE¼NW¼, E½E½W½SW¼, SW¼SE¼, and E½SE¼;
Sec. 11, NE¼NE¼, E½SE¼NE¼, W½W½, and E½SE¼SW¼;
Sec. 14, W½NW¼, S½SE¼NW¼, and NE¼SW¼;
Sec. 15, NE¼, E½NW¼, and E½E½NW¼NW¼;
Sec. 16, lots 3, 4, 7, and 11, lots 16 to 18, inclusive, lots 20, 21, and 24.
T. 11 N., R. 21 E.,
Sec. 1, lots 2 to 5, inclusive, lots 7, 8, 9 (formerly lot 1), lot 10, SW¼NE¼, SW¼, and W½SE¼;
Sec. 12, lots 1 to 4, inclusive, W½E½, and W½.
T. 12 N., R. 21 E.,
Sec. 26.

The areas described aggregate 3,666.08 acres in Navajo County.

2. The Secretarial Order dated April 23, 1943, which withdrew the following described public land, is hereby revoked in its entirety:

Gila and Salt River Meridian

T. 11 N., R. 22 E.,
Sec. 6, lot 7.

The area described contains 35.34 acres in Navajo County.

3. The following described lands are within an overlapping Forest Service withdrawal, Public Land Order No. 1626 as amended, and consequently will remain closed to mining and to such forms of disposition as may by law be made of National Forest System lands:

Gila and Salt River Meridian

Sitgreaves National Forests

T. 9 N., R. 22 E.,
Sec. 10, E½NE¼, NW¼NE¼, E½NE¼NW¼, E½E½W½SW¼, SW¼SE¼, and E½SE¼;
Sec. 15, NE¼, E½NW¼, and E½E½NW¼NW¼;
Sec. 16, lots 3, 4, 7, 11, lots 16 to 18, inclusive, lot 20 (formerly lot 2), lot 21 (formerly lots 8 and 9), and lot 24 (formerly lot 10).

The areas described aggregate 874.09 acres in Navajo County.

4. At 10 a.m. on April 3, 1995, the lands described in paragraphs 1 and 2, except those lands described in paragraph 3, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 10 a.m. on April 3, 1995, the lands described in paragraph 1 except, those lands described in paragraph 3, will be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

6. At 10 a.m. on April 3, 1995, the land described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on April 3, 1995 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: February 16, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–5087 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–32–P

43 CFR Public Land Order 7120

[AK–932–1430–01; F–031038]

Revocation of Public Land Order No. 743; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety a public land order, as it affects approximately 1.9 acres of public land withdrawn for use by the Department of Agriculture, Soil Conservation Service, for building purposes in Fairbanks. The

land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State is opened and will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

EFFECTIVE DATE: March 2, 1995.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Public Land Order No. 743, which withdrew public land for building purposes in Fairbanks, is hereby revoked as it affects the following described land:

Fairbanks Meridian

A parcel of land located within lot 2, sec. 5, T. 1 S., R. 1 W., more particularly described as:

Beginning at the southeast corner of said lot 2;

Thence, west along the southerly line of said lot 2, 530 feet, more or less, to the southerly line of College Road;

Thence, northeasterly along the southerly line of said College Road 610 feet, more or less, to the east line of said lot 2;

Thence, south along the east line of said lot 2, 310 feet, more or less, to the point of beginning.

The area described contains approximately 1.90 acres.

2. The State of Alaska application for selection made under Section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), for the land described above, becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

Dated: February 16, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–5143 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–JA–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1837

Revision to NASA FAR Supplement Coverage on Pension Portability; Correction

AGENCY: Office of Procurement, Acquisition Liaison Division, National Aeronautics and Space Administration (NASA).

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations that were published Tuesday, November 29, 1994 (59 FR 60916). The regulation related to pension portability.

EFFECTIVE DATE: December 29, 1994.

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction superseded, as of the effective date, NASA FAR Supplement coverage on pension portability in 48 CFR 1837.101, 1837.110, 1837.170, and 1852.237–71.

Need for Correction

As published, the final regulations contained an error in the amendatory language for 48 CFR subpart 1837.1. The amendatory language revised subpart 1837.1 in its entirety. In subpart 1837.1, the revision should have been limited to the three sections on pension portability. As a result of the error, three sections unrelated to pension portability were unintentionally removed. This correction is needed in order to retain sections 1837.104, 1837.105, and 1837.110–70.

Correction of Publication

Accordingly, the publication on November 29, 1994, of the final regulations, which were the subject of FR Doc. 94–29273, is corrected as follows:

Paragraph 2. On page 60917, in the first column, the amendatory language is corrected to read ''In subpart 1837.1, sections 1837.101, 1837.110, and 1837.170 are revised to read as follows:''

David K. Beck,

Federal Register Liaison Officer, Office of Procurement.

[FR Doc. 95–5133 Filed 3–1–95; 8:45 am]

BILLING CODE 7510–01–M

Proposed Rules

Federal Register
Vol. 60, No. 41
Thursday, March 2, 1995

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–12–AD]

Airworthiness Directives; Jetstream Aircraft Limited HP137 Mk1 and Series 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Jetstream Aircraft Limited (JAL) HP137 Mk1 and series 200 airplanes. The proposed action would require incorporating operating limitations that revise the maximum flap operating speed for DOWN flaps to 120 KIAS, and that prohibit extending the flaps beyond the take-off position if ice is visible on the airplane. An incident where an airplane of similar type design to that of the affected airplanes experienced sudden pitch down because of the accretion of over one-inch of ice prompted the proposed action. The actions specified in this proposed AD are intended to prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane.

DATES: Comments must be received on or before May 15, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–12–AD, Room 1558, 601 E 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–12–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–12–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion: An incident involving a JAL Model 3101 airplane prompted the FAA to issue the following AD's on the Model 3101 airplanes:

- AD 91–08–01: required revising the maximum speed for flaps at 50 degrees from 153/149 KIAS to 130 KIAS; and limiting the maximum flap extension to 20 degrees anytime ice is present on the airplane until it was superseded by AD 95–02–06; and
- AD 95–02–06: requires incorporating the 35-degree flap system modification as terminating action for the flap speed and flap extension limitations required by AD 91–08–01.

The JAL HP137 Mk1 and Jetstream series 200 airplanes are of a similar type design to the Jetstream Model 3101 airplanes. The FAA has determined that action similar to the flap speed and flap extension limitations required on the Model 3101 airplanes by AD 91–08–01 should be taken on the JAL HP137 Mk1 and Jetstream series 200 airplanes.

JAL has issued Jetstream Service Bulletin (SB) 27–A–JA 911044, dated January 31, 1992, which specifies changes in operational procedures for landing in icing conditions for JAL HP137 Mk1 and Jetstream series 200 airplanes.

In order to assure the continued airworthiness of these airplanes in the United Kingdom, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified Jetstream SB 27–A–JA 911044, dated January 31, 1992, as mandatory. The CAA classifying a service document as mandatory is the same for airplanes registered in the United Kingdom as the FAA issuing an AD for airplanes registered in the United States.

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has

kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other JAL HP137 Mk1 and Jetstream series 200 airplanes of the same type design, the proposed AD would require incorporating operating limitations that revise the maximum flap operating speed for DOWN flaps to 120 KIAS, and that prohibit extending the flaps beyond the take-off position if ice is visible on the airplane. The proposed actions would be accomplished in accordance with Jetstream SB 27–A–JA 911044, dated January 31, 1992.

The FAA estimates that 10 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts (placards fabricated from local resources) cost approximately $30 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $900. This figure is based on the assumption that no affected airplane owner/operator has incorporated the proposed limitations.

All 10 of the affected airplanes are HP137 Mk1's; there are no Jetstream series 200 airplanes registered in the United States, but they are type certificated for operation in the United States. According to FAA records, none of these HP137 Mk1 airplanes are in operation. Since there are no airplanes currently in operation, the cost impact of the proposed AD would be narrowed to only those owners/operators returning their airplane to operation.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 a new AD to read as follows:

Jetstream Aircraft Limited: Docket No. 95–CE–12–AD.

Applicability: HP137 Mk1 and Jetstream Series 200 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any aircraft from the applicability of this AD.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane, accomplish the following:

(a) Modify the operating limitations placards located on the flight deck in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) No. 27–A–JA 911044, dated January 31, 1992. This modification limits the maximum flap operating speed for DOWN flaps to 120 indicated airspeed (KIAS). Insert a copy of this AD into the Limitations section of the applicable airplane flight manual (AFM).

(b) Fabricate a placard with the words ''Do not extend the flaps beyond the take-off position if ice is visible on the aircraft. Ensure the landing gear selector is down prior to landing.'' Install this placard on the airplane's instrument panel within the pilot's clear view. Insert a copy of paragraph B. Instructions for Aircraft Operations of the Accomplishment Instructions section of Jetstream SB 27–A–JA 911044, dated January 31, 1992, into the Limitations section of the AFM.

Note 2: Parts of the airplane where ice could specifically be visible include the windshield wipers, center windshield, propeller spinners, or inboard wing leading edges.

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

(d) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, B–1000, Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

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

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 24, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–5121 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–09–AD]

Airworthiness Directives; Jetstream Aircraft Limited HP137 Mk1 and Jetstream Series 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 83–05–01, which currently requires the following on Jetstream Aircraft Limited (JAL) HP137 Mk1 and Jetstream series 200 airplanes: Repetitively inspecting the wing lower skin panels at the main gear bay cutout for loose or damaged rivets and cracks, replacing loose or damaged rivets, and repairing any cracked wing lower skin panel. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of repetitive short-interval inspections when improved parts or modifications are available. The proposed action would require reinforcing the wing lower skin at both the landing gear cutout at Wing Station (WS) 115 and the undercarriage bay cutout at WS 60 and WS 90, as terminating action for the repetitive inspections that are currently required by AD 83–05–01. The actions specified in the proposed AD are intended to prevent wing damage caused by cracks or loose or damaged rivets in the wing lower skin panels, which, if not detected and corrected, could result in damage to the point of structural failure.

DATES: Comments must be received on or before May 15, 1995.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–09–AD, Room 1558, 601 E 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000, Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–09–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–09–AD, Room 1558, 601 E 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) The safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage occurring to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could eliminate, or, in certain instances, reduce the number of critical repetitive inspections.

From this review, the FAA has identified AD 83–05–01, Amendment 39–4573, as one that should be superseded with a new AD that would require a modification that, when incorporated, would eliminate the need for short-interval and critical repetitive inspections. AD 83–05–01 currently requires repetitively inspecting the wing lower skin panels at the main gear bay cutout for loose or damaged rivets and cracks, replacing loose or damaged rivets, and repairing any cracked wing lower skin panel. The inspections are accomplished in accordance with Jetstream Service Bulletin (SB) No. 7/3, dated October 1980.

JAL has introduced two wing lower skin reinforcements that, when incorporated, (1) Reinforce the wing lower skin at the landing gear bay cutout at WS 115 (Modification No. 5122), and (2) reinforce the wing lower skin at undercarriage bay cutout between WS 60 and WS 90 (Modification No. 5146). Jetstream SB 57–JM5221 specifies procedures for incorporating Modification 5221, and Modification No. 5146 Part 2 (Ref 7/5146), specifies procedures for incorporating Modification 5146.

Based on its aging commuter-class aircraft policy and after reviewing all available information, the FAA has determined that AD action should be taken to eliminate the repetitive short-interval inspections required by AD 83–05–01, Amendment 39–4573, and to prevent wing damage caused by cracks or loose or damaged rivets in the wing lower skin panels, which, if not detected and corrected, could result in damage to the point of structural failure.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the

applicable bilateral airworthiness agreement.

Since an unsafe condition has been identified that is likely to exist or develop in other JAL HP137 Mk1 and Jetstream series 200 airplanes of the same type design, the proposed AD would supersede AD 83–05–01 with a new AD that would (1) retain the requirements of repetitively inspecting the wing lower skin panels at the main gear bay cutout for loose or damaged rivets and cracks, replacing loose or damaged rivets, and repairing any cracked wing lower skin panel; and (2) require incorporating Modification Nos. 5122 and 5146 as terminating action for the repetitive inspections. The proposed inspection would be accomplished in accordance with Jetstream SB No. 7/3, dated October 1980. Modification 5122 would be accomplished in accordance with Jetstream SB 57–JM5221, dated September 28, 1984, and Jetstream Modification 5146 would be accomplished in accordance with Modification No. 5146 Part 2 (Ref 7/5146), which incorporates the following pages:

Pages	Issue level	Date
1, 2, 4, 7, and 8	1	March 1981.
3, 5, and 6	2	August 1982.

The FAA estimates that 10 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 332 workhours per airplane to accomplish the proposed modifications (172 workhours for Modification 5221 and 160 workhours for Modification 5146), and that the average labor rate is approximately $60 an hour. Parts cost approximately $12,000 per airplane ($2,400 for Modification 5221 and $9,600 for Modification 5146). Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $319,200 ($31,920 per airplane).

All 10 of the affected airplanes are HP137 Mk1's; there are no Jetstream series 200 airplanes registered in the United States, but they are type certificated for operation in the United States. According to FAA records, none of these HP137 Mk1 airplanes are in operation. JAL no longer stocks Modification No. 5122, but can develop modification kits within three months after order. Since there are no airplanes currently in operation, the cost impact of the proposed AD would be narrowed to only those owners/operators returning their airplane to operation.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 removing AD 83–05–01, Amendment 39–4573, and adding a new AD to read as follows:

Jetstream Aircraft Limited: Docket No. 95–CE–09–AD. Supersedes AD 83–05–01, Amendment 39–4573.

Applicability: HP137 Mk1 and Jetstream Series 200 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any aircraft from the applicability of this AD.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent wing damage caused by cracks or loose or damaged rivets in the wing lower skin panels, which, if not detected and corrected, could result in damage to the point of structural failure, accomplish the following:

(a) Upon the accumulation of 6,500 hours time-in-service (TIS) or within the next 100 hours time-in-service after the effective date of this AD, whichever occurs later, unless already accomplished (see NOTE 1), and thereafter at intervals not to exceed 100 hours TIS until the modifications required by paragraphs (b)(1) and (b)(2) of this AD are incorporated, accomplish the following:

(1) Inspect the wing lower skin between Wing Station (WS) 60 and WS 115 for loose or damaged rivets or cracks in accordance with section 3. *ACTION,* paragraphs (a) through (e), of Jetstream Service Bulletin (SB) No. 7/3, dated October 1980.

(2) Replace any loose or damaged rivets and repair any cracked wing lower skin panel in accordance with section 3. *ACTION,* paragraphs (f) through (k), of Jetstream SB No. 7/3, dated October 1980.

Note 2: The repetitive inspections required by paragraph (a) of this AD are the same as required by superseded AD 83–05–01. The intent of this AD is to maintain this repetitive inspection program for the affected airplane operators until the requirements of paragraph (b) of this AD are accomplished.

(b) Upon the accumulation of 10,000 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, accomplish the following:

(1) Reinforce the wing lower skin at the landing gear bay cutout at WS 115 in accordance with Jetstream SB 57–JM5221, dated September 18, 1984. This is referred to as Modification 5221.

(2) Reinforce the wing lower skin at undercarriage bay cutout between WS 60 and WS 90 in accordance with Modification No. 5146 Part 2 (Ref 7/5146), which incorporates the following pages:

Pages	Issue level	Date
1, 2, 4, 7, and 8	1	March 1981.
3, 5, and 6	2	August 1982.

(c) The reinforcements required by paragraphs (b)(1) and (b)(2) of this AD may be accomplished prior to 10,000 hours TIS as

terminating action for the repetitive inspection requirement of this AD.

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

(e) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, B–1000, Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

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

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 83–05–01, Amendment 39–4573.

Issued in Kansas City, Missouri, on February 24, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–5122 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–13–U

RAILROAD RETIREMENT BOARD

20 CFR Part 200

[RIN 3220–AB12]

General Administration

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations to explain when the Board will provide custom tailored information to a member of the public and to set forth the charges for such special services. The Board also proposes to amend its regulations to explain when the Board may provide custom tailored information without charging for that service.

DATES: Comment shall be submitted on or before May 1, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: OMB Circular A–25 establishes Federal policy regarding fees to be assessed for special benefits. In the case of the Railroad Retirement Board those benefits would be the provision of custom tailored or non-routine information services. The Board proposes to require payment of the Board's actual costs, as defined in the proposed rule, for the provision of such services. Consistent with OMB Circular A–25, the proposed rule provides that if it is determined that the identity of the specific beneficiary is obscure and that provision of the information can be considered primarily as benefiting broadly the general public, then the Board may determine in a particular case not to charge for the service. However, consistent with the authority contained in section 12(d) of the Railroad Unemployment Insurance Act (which is incorporated into the Railroad Retirement Act by section 7(b)(3) of the Act), the proposed regulation provides that charges may be assessed in any specific case. This regulation does not cover information which is required to be disclosed by statute or regulation such as information required to be disclosed under the Freedom of Information Act.

The Board, in conjunction with the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II, part 200 of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.4 is amended by adding paragraphs (o) and (p) to read as follows:

§ 200.4 Availability of information to public.

* * * * *

(o) *Custom Tailored Information Services; Fees Charged.*

This paragraph and paragraph (p) of this section set forth the policy of the Railroad Retirement Board with respect to the assessment of a fee for providing custom tailored information where requested. Except as provided in paragraphs (o)(4) (vii) and (p) of this section, a fee shall be charged for providing custom tailored information.

(1) *Definition: Custom tailored information.* Custom tailored information is information not otherwise required to be disclosed under this part but which can be created or extracted and manipulated, reformatted, or otherwise prepared to the specifications of the requester from existing records. For example, the Board needs to program computers to provide data in a particular format or to compile selected items from records, provide statistical data, ratios, proportions, percentages, etc., and this data is not already compiled and available, the end product would be the result of custom tailored information services.

(2) *Providing custom tailored information.* The Board is not required to provide custom tailored information. It will do so only when the appropriate fees have been paid as provided in paragraph (o)(4) of this section and when the request for such information will not divert staff and equipment from the Board's primary responsibilities.

(3) *Requesting custom tailored information.* Information may be requested in person, by telephone, or by mail. Any reuqest should reasonably describe the information wanted and may be sent to the Director of Administration, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

(4) *Fee schedule.* Request for custom tailored information are chargeable according to the following schedule:

(i) *Manual searching for records.* Full cost of the time of the employees who perform the service, even if records cannot be found, management and supervisory costs, plus the full costs of any machine time and materials the employee uses. Consulting and other indirect costs will be assessed as appropriate.

(ii) *Photocopying or reproducing records on magnetic tapes or computer diskettes.* The charge for making photocopies of any size document shall

be $.10 per copy per page. The charge for reproducing records on magnetic tapes or computer diskettes is the full cost of the operator's time plus the full cost of the machine time and the materials used.

(iii) *Use of electronic data processing equipment to obtain records.* Full cost for the service, including computer search time and computer runs and printouts, and the time of computer programmers and operators and of other employees.

(iv) *Certification or authentication.* Full cost of certification and authentication.

(v) *Providing other special services.* Full cost of the time of the employee who performs the service, management and supervisory costs, plus the full costs of any machine time and materials the employee uses. Consulting and other indirect costs will be assessed as appropriate.

(vi) *Special forwarding arrangements.* Full cost of special arrangements for forwarding material requested.

(vii) *Statutory supersession.* Where a Federal statute prohibits the assessment of a charge for a service or addresses an aspect of that charge, the statute shall take precedence over this regulation.

(p) *Assessment of a Fee with Respect to the Provision of Custom Tailored Information Where the Identification of the Beneficiary Is Obscure and Where Provision of the Information Can be Seen as Benefiting the Public Generally.* When the identification of a specific beneficiary with respect to the provision of custom tailored information is obscure, the service can be considered primarily as benefiting broadly the general public, and the estimated cost of providing the information is less than $1,000.00, the Director of Administration shall determine whether or not a fee is to be charged. In any such case where the cost is $1,000.00 or more, the request shall be referred by the Director of Administration to the three-member Board for a determination whether or not a fee is to be assessed.

* * * * *

Dated: February 23, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–5132 Filed 3–1 –95; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Missouri regulatory program (hereinafter, the ''Missouri program'') under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.,* SMCRA). The proposed amendment consists of changes to provisions of the Missouri regulations pertaining to definitions, topsoil redistribution, impoundment design, disposal of coal processing and noncoal waste, backfilling and grading, coal exploration, fish and wildlife plan, permit approval findings, notice of violations, and eligibility for small operators assistance. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

This notice sets forth the times and locations that the Missouri program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t. April 3, 1995. If requested, a public hearing on the proposed amendment will be held on March 27, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.s.t. on March 17, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Michael C. Wolfrom at the address listed below.

Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Michael C. Wolfrom, Acting, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, MO 64105, Telephone: (816) 374–6405

Land Reclamation Program, Missouri Department of Natural Resources, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (314) 751–4041.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Proposed Amendment

By letter dated February 10, 1995 (administrative record No. MO–612), Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment with the intent of satisfying the required program amendments at 30 CFR 925.16 (b)(4), (p)(9), and (q)(1) through (q)(5), and at its own initiative to improve its program. The amendment also contains nonsubstantive revisions to eliminate editorial and typographical errors and to accomplish necessary recodification required by the addition or deletion of provisions.

Specifically, Missouri proposes to revise (1) 10 Code of State Regulations (CSR) 40–3.030(4) to require that contamination of topsoil be prevented during redistribution; (2) 10 CSR 40–3.040(10)(B)5 to reference the January 1991, U.S. Natural Resources Conservation Service (formerly the Soil Conservation Service) technical document, Practice Standards 378, concerning impoundment design; (3) 10 CSR 40–3.110(3)(A)1 to clarify that the requirements of this section apply to coal seams, combustible materials, and acid- and toxic-forming materials, to require that coal processing waste and noncoal waste be covered in accordance with the regulations for disposal of coal processing waste at 10 CSR 40–3.080, and to delete the existing requirement

that exposed coal seams and combustible materials, including coal processing waste, be covered with a minimum of 4 feet of nontoxic- and nonacid-producing materials unless otherwise demonstrated; (4) 10 CSR 40–3.110(6)(B) to provide that the regulations for repair of rills and gullies at 10 CSR 40–3.110(6)(A) apply, on areas that have been previously mined, only after final grading of the area when topsoil or a topsoil substitute is not available; (5) 10 CSR 40–6.010(2)(H) to add a definition of ''Secretary;'' (6) 10 CSR 40–6.020 (2)(A) and (3)(A) to clarify that these regulations concern exploration activities outside of a permit area; (7) 10 CSR 40–6.120 (7)(C) and (D) and (12)(C) and (D) to specify the information that must be included in a fish and wildlife plan and that, when the plan does not include enhancement measures, it must include an explanation of why enhancement is not practicable; (8) 10 CSR 40–6.070(8)(M) to require that the Director of the Missouri program must find, prior to permit approval for a proposed remaining operation where the applicant intends to reclaim in accordance with the requirements of 10 CSR 40–4.080, that the site of the operation is a previously mined area; (9) at 10 CSR 40–8.010(1)(A)72 the definition of ''previously mined area;'' (10) at 10 CSR 40–8.010(1)(A)84 the definition of ''road;'' (11) 10 CSR 40–8.030(7)(A) to delete the requirement that modification, termination, or vacating of notice of violations must be in accordance with the regulation at 10 CSR 40–8.040; (12) 10 CSR 40–8.040(9) to delete the definition of ''habitual violator;'' and (13) 10 CSR 40–8.050(2)(B) to change the eligibility requirement of coal production of 100,000 tons per year to 300,000 tons per year for a small operator assistance applicant.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

Written Comments

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

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. [March 17, 1995]. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment having been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d]) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C).

Compliance With Executive Order No. 12866

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 23, 1995.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–5151 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 209

University Research Initiative Support Program (URISP)

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule is to comply with section 802 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160), which requires the Department of Defense to establish URISP, and prescribe a regulation for carrying out the program. URISP is required to be a competitive university research program for research and development that is relevant to the requirements of the Department of Defense, that is set aside for Colleges and Universities that have received less than $2 million dollars from the Department of Defense over the two previous fiscal years. URISP is oriented toward assisting institutions build university research infrastructure in the fields of science, engineering, and mathematics, so they may become more competitive.

DATES: Written comments on this proposed rule must be received by May 1, 1995.

ADDRESSES: Forward comments to the Office of Director of Defense Research and Engineering, Pentagon—3E1045, Washington, DC 20301–3080.

FOR FURTHER INFORMATION CONTACT: Mr. Art McGregor (703) 614–0205.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 209 is not a significant regulation action. The rule does not:

(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; State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule does not place any economic burdens on small entities. The primary effect on grantees administering this rule will be a reduction in administrative cost and other burdens resulting from the simplification and clarification of certain policies and the elimination of policy differences among the Federal Agencies promulgating this proposed rule.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 44)

It has been certified that 32 CFR part 209 does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 209

Education, Grants, Institutions, and Universities.

Accordingly, title 32, chapter I, subchapter M is proposed to be amended to add part 209 to read as follows:

PART 209—UNIVERSITY RESEARCH INITIATIVE SUPPORT PROGRAM (URISP)

Authority: Sec. 802 of Pub. L. 103–160 (see 10 U.S.C. 2358 note)

§ 209.1 Purpose.

This part establishes policy and assigns responsibilities under section 802 of Public Law 103–160 (see 10 U.S.C. 2358 note).

§ 209.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, and Defense Agencies responsible for the majority of the university basic research grants in the Department of Defense.

§ 209.3 Definitions.

(a) *American Association of State Colleges and Universities (AASCU).* Institutions that are members of AASCU during the period that peers are selected.

(b) *Eligible Institutions.* Institutions that may compete for URISP funding are those that have received a total of less than $2 million in obligations from the Department of Defense, over the two previous fiscal years (FYs). A list of ineligible institutions will be attached as an appendix to the URISP announcement, and institutions not on the list are eligible to participate.

(c) *Institutions.* Institutions of Higher Education that have accredited, degree-granting programs in science, engineering or mathematics.

(d) *Merit-based selection process.* A university-based review using peers who are members of the faculty or staff of an institution of higher education that is a member of NASULGC or AASCU (section 802 of Pub. L. 103–160).

(e) *National Association of State Universities and Land Grant Colleges (NASULGC).* Institutions that are members of NASULGC during the period that peers are selected.

(f) *Research Offices.* The research office under the Military Services and Defense Agencies that are responsible for the majority of the university basic research grants in the Department of Defense. These are:

(1) Advanced Research Projects Agency.

(2) Air Force Office of Scientific Research.

(3) Army Research Office.

(4) Ballistic Missile Defense Organization.

(5) Office of Naval Research.

§ 209.4 Policy.

It is DoD policy that:

(a) The purpose of URISP is to help build the infrastructure in the fields of science, engineering, and mathematics

that are important to the Department of Defense, through the use of competitive, multi-year grants to support the conduct of research and development relevant to requirements of the Department of Defense, at institutions that have received less than $2.0 million from the Department of Defense over the 2 previous FYs (section 802 of Pub. L. 103–160).

(b) All URISP funds shall be obligated using a merit-based selection process. The university peer reviewers shall be from the faculty and staff of institutions that are members of NASULGC and ASSCU (section 802 of Pub. L. 103–160).

(c) Institutions eligible to participate in URISP will be determined using DoD obligation data for the two previous FYs.

§ 209.5 Responsibilities.

(a) The Director of Defense Research and Engineering, under the Under Secretary of Defense for Acquisition and Technology, shall ensure that only eligible institutions are allowed to participate in URISP. The Director of Defense Research and Engineering shall oversee the approval of any selected scientific topical areas to be included in the URISP announcement, and the allocation of funds among the research offices. The URISP shall be reviewed annually and modified as appropriate to ensure that defense requirements are being met.

(b) The Secretaries of the Military Departments, and the Directors of the Defense Agencies responsible for the majority of the university basic research grants, under OSD Principal Staff Assistants, shall ensure that:

(1) All proposals chosen for URISP funding shall have been selected through a merit-based selection process using university peer reviewers selected only from the faculty and staff of institutions that are members of the NASULGC and AASCU (section 802 of Pub. L. 103–160).

(2) Each project funded under URISP is reviewed annually to determine if defense requirements are being met.

Dated: February 24, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–5079 Filed 3–1–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of meetings.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. The Corporation and the Authority currently are in disagreement over the level and nature of future tolls. The Corporation is considering recommendations to be made to the Authority that joint rulemaking be undertaken to lower the level of tolls or otherwise change the Tariff. In order to determine whether such a rulemaking is warranted, what the substance should be, and what is the scope of the issues involved, the Corporation is holding five public meetings to discuss the problems encountered under the existing toll structure and possible solutions. This notice announces the dates, times, and places of the meetings.

DATES: The meetings will be held on March 7, 1995, in Duluth, Minnesota, on March 14, 1995, in Milwaukee, Wisconsin, on April 5, 1995, in Portage, Indiana, on April 11, 1995, in Toledo, Ohio, and on April 26, 1995, in Ogdensburg, New York, each beginning at 9:30 a.m. and concluding at 12 noon, except the Duluth meeting which will begin at 2 p.m. and conclude at 4:30 p.m., and the Milwaukee meeting which will begin at 1 p.m. and conclude at 3:30 p.m.

ADDRESSES: The meetings will be held in: the conference room of the Seaway Port Authority of Duluth, 1200 Port Terminal Drive, Duluth, Minnesota; the conference room of the Port of Milwaukee, 2323 South Lincoln Memorial Drive, Milwaukee, Wisconsin; in the conference room of Burns International Harbor, 6600 U.S. Highway 12, Portage, Indiana; the conference room of the Port Authority Office, 1 Maritime Plaza, Toledo, Ohio; and the board room of the Ogdensburg Bridge and Port Authority, Bridge Plaza, Ogdensburg, New York.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, P.O. Box 44090, Washington, DC 20026–4090, (202) 366–6823.

SUPPLEMENTARY INFORMATION: Discussions between the Corporation and the Authority about the Seaway Tariff of Tolls have resulted in disagreement over future Tariff amendments. It is necessary to take into account prevailing market conditions and not unduly restrict maritime commerce or create additional barriers to trade in the development of the Tariff. Both parties wish to pursue fairness among their primary goals and strive for equal treatment for vessels and cargoes using the Seaway, but disagree on the current, fundamental economic basis for new toll levels. In addition, they believe that it is necessary to seek simplicity in developing the Tariff as complexity and ambiguity tend to provide a disincentive to using the Seaway. Lastly, both parties wish to strive for stability so that those engaged in commerce on the Seaway can make long-term planning decisions with some confidence of future conditions.

Based upon these mutual conclusions, the Corporation is considering recommending to the Authority that joint rulemaking be undertaken to lower the level of tolls or otherwise change the Tariff. In order to determine whether such a rulemaking is warranted, what the substance should be, and what is the scope of the issues involved, the Corporation is holding five public meetings to discuss the problems encountered under the existing toll structure and possible solutions. These meetings will be open for discussion, however, any person wishing to make a formal presentation is requested to notify the Corporation at least five working days before the meetings and provide the approximate time desired for the presentation to Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, P.O. Box 44090, Washington, DC 20026–4090 (202–366–6823). In addition, the Corporation requests an original written text of any formal presentation along with five copies before, at, or within ten working days after the time of the meeting. Finally, if any person wishes to present written comments, but not participate in the meetings, they may submit those comments to that same address at any time before, at, or within ten working days after the time of the meetings.

The meetings are open to the public, each beginning at 9:30 a.m. and

concluding at 12 noon, except the Duluth meeting which will begin at 2 p.m. and conclude at 4:30 p.m., and the Milwaukee meeting which will begin at 1 p.m. and conclude at 3:30 p.m., and will be at the following dates and places: March 7, 1995, in the conference room of the Seaway Port Authority of Duluth, 1200 Port Terminal Drive, Duluth, Minnesota; March 14, 1995, in the conference room of the Port of Milwaukee, 2323 South Lincoln Memorial Drive, Milwaukee, Wisconsin; April 5, 1995, in the conference room of Burns International Harbor, 6600 U.S. Highway 12, Portage, Indiana; April 11, 1995, in the conference room of the Port Authority Office, 1 Maritime Plaza, Toledo, Ohio; and April 26, 1995, in the board room of the Ogdensburg Bridge and Port Authority, Bridge Plaza, Ogdensburg, New York.

Issued at Washington, D.C. on February 24, 1995.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 95–5144 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–61–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 95–18; FCC 95–39]

Allocation of Spectrum at 2 GHz for Use by the Mobile-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this Notice of Proposed Rule Making, the Commission proposes to allocate 70 megahertz of spectrum at 1990–2025 MHz and 2165–2200 MHz to the Mobile-Satellite Service (MSS). This proposal responds to petitions filed by Celsat, Inc., TRW, and the Personal Communications Satellite Corporation for spectrum in the 2 GHz range to operate satellites providing personal communications services. This Notice of Proposed Rule Making solicits comment on the proposed allocation, including the necessity and means of moving incumbent Broadcast Auxiliary Service and microwave licensees to another band; on technical requirements for MSS in the proposed bands; and on awarding MSS licenses in the proposed bands by competitive bidding.

COMMENT DATES: Comments are due March 9, 1995. Reply comments are due March 27, 1995.

FOR FURTHER INFORMATION CONTACT: Sean White, Office of Engineering and Technology, (202) 776–1624.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted January 30, 1995, and released January 31, 1995. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. In this Notice of Proposed Rule Making, the Commission proposes to allocate 70 megahertz of spectrum at 1990–2025 MHz and 2165–2200 MHz to the Mobile-Satellite Service (MSS). The 1992 World Administrative Radio Conference (WARC–92) allocated the 1970–1980 MHz (Earth-to-space) and 2160–2170 MHz (space-to-Earth) bands in Region 2 and the 1980–2010 MHz (Earth-to-space) and 2170–2200 MHz (space-to-Earth) bands worldwide to MSS. In the June 1994 Memorandum Opinion and Order in GEN Docket No. 90–314, 59 FR 32830, June 24, 1994, we allocated the 1850–1990 MHz band to terrestrial broadband personal communications services (PCS). Because of this, it does not appear to be practicable to make a domestic allocation of 2 GHz spectrum for MSS that is consistent with the international allocation without jeopardizing the availability of spectrum for PCS.

2. We believe that a need exists for allocating a substantial amount of spectrum for MSS. There is significant consumer demand for convenient mobile services such as telephone, high-rate data and fax, and video. MSS can provide such communications in remote or rural areas not covered by terrestrially based mobile services, and can provide nationwide public safety coverage. We also believe that use of 2 GHz frequencies can help minimize transmission costs and ensure a relatively low cost service that will be within the economic reach of a large segment of the population. Thus, the proposed allocation of 70 MHz of spectrum to MSS should give the public, especially rural Americans, access to new and competitive services and technologies.

3. Any 2 GHz MSS allocation should be as consistent as possible with the WARC–92 worldwide MSS allocation, to help ensure a truly universal service. We therefore believe that incorporating use of the 1990–2010 MHz and 2170–2200 MHz bands allocated for MSS by WARC–92 is desirable. At the same time, we believe that 70 megahertz is needed to accommodate all MSS demand, and so propose to allocate 1990–2025 MHz and 2165–2200 MHz to MSS.

4. This allocation would require that the candidate bands be cleared of Broadcast Auxiliary Service (BAS) incumbents in the 1990–2025 MHz band. In order to accommodate these incumbents, we propose to add 35 megahertz at the upper end of the BAS spectrum to offset the 35 megahertz we are allocating to MSS, making the BAS allocation 2025–2145 MHz. MSS providers would have to bear the costs of moving BAS licensees to their new band. The proposed MSS allocation would also require relocation of microwave incumbents. We addressed this issue in the First Report and Order and Third Notice of Proposed Rule Making in ET Docket No. 92–9, 58 FR 46457, September 2, 1993, and propose to follow the same procedures, requiring that MSS licensees bear the entire cost of relocating BAS and microwave incumbents in the 1990–2025 MHz and 2165–2200 MHz bands.

5. The Commission solicits public comment on the proposed allocation, the proposal to relocate BAS and microwave incumbents, any other sharing or technical matters pertinent to the proposed allocation, and our proposal to allocate licenses in the proposed MSS spectrum by competitive bidding.

List of Subjects in 47 CFR Part 2

Frequency allocations and radio treaty matters, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–5128 Filed 3–1–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 63

[IB Docket No. 95–22, FCC 95–53]

Foreign-Affiliated Entities: In the Matter of Market Entry and Regulation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission is proposing to modify its approach to determining the public interest in cases where a foreign carrier

or its affiliate applies for authority under Section 214 of the Communications Act to enter the U.S. market to provide international facilities-based services. In reviewing such applications, the Commission proposes to examine whether effective market access is available, or will soon be available, to U.S. carriers in the primary markets of the foreign carrier seeking entry. This would be an important element of the Commission's public interest determination. In addition, the Commission requests comment on whether it should modify certain aspects of its regulation of U.S. international carriers. It also clarifies and requests comment on its definition of an international facilities-based carrier. Finally, the Commission asks whether it should incorporate the proposed effective market access test as an important element of the Section 310(b)(4) public interest analysis it applies to foreign entities seeking to acquire an indirect ownership interest in U.S. radio licenses. The proposals contained in the Notice are intended to establish standard rules to regulate foreign carrier entry into the U.S. marketplace in order to promote effective global competition, prevent anti-competitive conduct and encourage foreign governments to open their communications markets.

DATES: Comments must be submitted on or before March 28, 1995. Reply comments must be submitted on or before April 28, 1995.

ADDRESSES: All comments and reply comments concerning these proposals should be addressed to: Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Troy F. Tanner or Susan Lee O'Connell, Attorney-Advisors, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted on February 7, 1995 and released February 17, 1995. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text of this Notice also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

Regulatory Flexibility Act

A. Reason for Action

This rulemaking proceeding is initiated to obtain comment regarding proposed changes to the Commission's entry standard for foreign carriers desiring to enter the U.S. international telecommunications market, as well as changes to the Commission's public interest standard for foreign entities that seek to acquire an indirect interest in a U.S. common carrier, aeronautical, or broadcast radio license. Comment is also requested on proposed modifications to the Commission's dominant carrier safeguards as well as to other non-discrimination safeguards. Comment is also sought on the Commission's definition of an international facilities-based carrier.

B. Objectives

The Commission seeks to establish standard rules and procedures to regulate foreign entry into the U.S. marketplace in order to promote effective competition and prevent anti-competitive conduct in the market for international communications services, as well as to encourage foreign governments to open their communications markets.

C. Legal Basis

The proposed action is authorized under Sections 4 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303(r).

D. Reporting, Recordkeeping and Other Compliance Requirements

The actions contained in this Notice of Proposed Rulemaking may affect large and small carriers. We propose to require that dominant, foreign-affiliated carriers maintain or provide certain records regarding their foreign carrier affiliates. These U.S. carriers may be required to comply with proposed requirements to file certain reports, but this is not estimated to be a significant economic burden for these entities.

E. Federal Rules That Overlap, Duplicate or Conflict With These Rules

None.

F. Description, Potential Impact, and Number of Small Entities Involved

To the extent that the proposals discussed in this Notice of Proposed Rulemaking propose to make equity investment by foreign carriers in U.S. carriers more difficult, carriers seeking foreign investment greater than the proposed threshold will be adversely affected. These proposals are intended to ensure that U.S. carriers can compete effectively in international markets and to open closed foreign markets. Copies of this Notice will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

The Notice solicits comment on a variety of alternatives to achieve Commission objectives.

Summary of Notice of Proposed Rulemaking

This Notice of Proposed Rulemaking proposes new policies governing the participation of foreign carriers in the U.S. international telecommunications market. The Commission proposes three goals of its regulation of the U.S. international telecommunications market: (1) To promote effective competition in the global market for communications services; (2) to prevent anticompetitive conduct in the provision of international services or facilities; and (3) to encourage foreign governments to open their communications markets. The Commission considers how to achieve these goals through implementation of Sections 214 and 310 of the Communications Act. The Commission finds that allowing foreign carrier entry into the U.S. international services market will further the public interest by providing additional competition that will benefit consumers. The Commission tentatively concludes, however, that unrestricted foreign carrier facilities-based entry is not in the public interest when U.S. carriers do not have effective opportunities to compete in the provision of services and facilities in the foreign carrier's primary markets.

The Commission proposes to modify its public interest standard for considering foreign carrier applications under Section 214 of the Act to enter the U.S. market to provide international facilities-based services. The Commission seeks comment on requiring as an important element of its public interest standard a demonstration that effective market access is, or will soon be, available to U.S. carriers seeking to provide basic, international telecommuncations facilities-based services in the primary markets served by the carrier desiring entry. The Commission also would continue to consider other factors as part of its public interest analysis, such as national security, the openness of other telecommunications segments of the

foreign carrier's primary markets, and the ability and incentives of the foreign carrier to discriminate against unaffiliated U.S. carriers.

In addition, the Notice proposes a specified level of foreign carrier ownership in a U.S. carrier at which the proposed entry standard would apply. The Commission asks whether it is desirable to consider an applicant to be ''affiliated'' with a foreign carrier for purposes of the new rules when the foreign carrier acquires an ownership interest of a certain minimum level or a controlling interest at any level. The Notice requests comment on whether the minimum level of ownership should be set at greater than ten percent, twenty-five percent, or some other level of the capital stock of the applicant.

The Commission also seeks comment on whether the affiliation standard it adopts should replace the current affiliation standard it uses for purposes of classifying an affiliated U.S. carrier as dominant or nondominant on a particular U.S. international route, based on the market power of its foreign carrier affiliate on the foreign end of the route. In addition, the Commission requests comment on whether certain safeguards applied to dominant carriers should be modified to improve their effectiveness. It additionally asks for comment on other proposed nondiscrimination safeguards, including safeguards that would apply to all U.S. international carriers. The Commission also clarifies the definition of a facilities-based carrier and requests comment on its proposal to codify that definition in this proceeding.

Finally, the Notice asks whether the goals of the proceeding would be served by incorporating the proposed effective market access test as an element of the Section 310(b)(4) public interest analysis applicable to foreign entities seeking to acquire an indirect ownership interest of more than 25 percent in U.S. radio licensees. Thus, the Notice asks whether the Commission's evaluation of the public interest should consider whether the primary markets of the foreign entity offer effective market access to U.S. licensees to provide the same type of radio-based services as requested in the United States. The Notice also seeks comment on other public interest factors the Commission should consider.

The Notice seeks public comment on whether these proposals are administratively feasible and whether these approaches or other alternatives will best serve the Commission's goals.

List of Subjects in 47 CFR Part 63

Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–5127 Filed 3–1–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 933 and 970

Regulation Identifier Number 1991–AB20 Acquisition Regulation; Department of Energy Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) today issues a Notice of Proposed Rulemaking to amend the Department of Energy Acquisition Regulation (DEAR) to modify requirements for management and operating contractor purchasing systems. DEAR subpart 970.71 will be revised to identify certain purchasing system objectives and standards; eliminate the application of the ''Federal norm''; and place greater reliance on commercial practices.

DATES: Written comments on the proposed rulemaking must be received on or before May 1, 1995.

ADDRESSES: Comments on the proposed rulemaking should be addressed to the U.S. Department of Energy, Director, Procurement and Property Review and Evaluation Division (HR–525.1), Attention: James J. Cavanagh, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: James J. Cavanagh, Director, Procurement and Property Review and Evaluation Division (HR–525.1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone 202–586–8257.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The Government-wide approach to evaluating contractor purchasing systems, as set forth in Federal Acquisition Regulation (FAR) Subpart 44.301, is to ''evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with the Government policy when subcontracting.'' Most Federal contracts require purchases to be made in accordance with the applicable laws and the terms and conditions of the contract, with minimal references back to acquisition regulations. The policy for the extent of reviews of these purchasing systems is set forth at FAR 44.303.

Unlike other contractors, however, a DOE management and operating contractor historically has been expected to conform its purchasing practices to the ''Federal norm.'' As provided at the DEAR 970.7103, the Federal norm is an ''evolving concept'', which attempts to balance commercial purchasing practices with Federal procurement principles embodied in law and regulation. The DEAR identifies a number of tenets of Federal policy and practices to which DOE's management and operating contractors must adhere. As a result of the Federal norm, and iterations of related reviews, audits, and protest decisions, management and operating contractor purchasing has, over the years, become increasingly Federal-like, replacing efficient and effective commercial business practices.

In accordance with the objectives of the National Performance Review and the Secretary of Energy's Contract Reform Team Report, the Department intends to revise its expectations for management and operating contractor purchasing systems by eliminating the concept of the ''Federal norm.'' In lieu of the detailed tenets contained in DEAR subpart 970.71, which have resulted in the inefficient layering of non-commercial systems and practices, the Department has identified certain purchasing system objectives and standards which it believes are common to superior purchasing activities, whether they be commercial or public.

In addition, as the Department eliminates the concept of the ''Federal norm,'' the Department intends that any disagreements with management and operating contractor purchasing decision(s) be a matter to be settled between the contractor and potential subcontractor(s). Such disagreements are typically handled in this manner in the commercial sector. The Department expects that its management and operating contractors shall handle any

such disagreements in an open, fair, and reasonable manner, and endorses the use of ombudsmen and alternative disputes resolution procedures for that purpose. Accordingly, by this action, the Department proposes to delete DEAR 970.7107 which provides guidelines for the consideration of subcontractor level protests. This is consistent with the General Accounting Office proposed rule published at 60 FR 5871, January 31, 1995. It is the intention of the Department to incorporate the changes made by this proposed rule into existing management and operating contracts as soon as practicable after the effective date of a final rule.

II. Section-by-Section Analysis

1. Section 933.170, Subcontract level protests, is removed.

2. The revision to paragraph (a) of the clause, Contractor Purchasing System, at 970.5204–22 provides guidance for a management and operating contract acquisition system consistent with proposed revisions to section 970.7103.

3. Section 970.7101, General, is revised by removing paragraphs (c) and (d).

4. The revision to section 970.7102(a) removes the parenthetical which contains references which will no longer exist when sections 970.7104 and 970.7108 are removed in their entirety. Section 970.7102(b)(3) is revised to provide that review of individual purchasing actions shall be pursuant to FAR Subpart 44.2. Section 970.7102(b)(4) is revised to provide that periodic appraisals shall be in accordance with established policies in section 970.7103.

5. The revisions to section 970.7103 eliminate the concept of the ''Federal norm,'' and establish contractor purchasing systems objectives, expectations, and standards.

6. Section 970.7104, Conditions of purchasing by management and operating contractors, is removed. The DOE believes it is not necessary to retain this section since many of the requirements comply with provisions of statutes and are already reflected in contract clauses. These requirements will, therefore, continue to be applicable as contractual requirements. Some of the requirements, however, are not specifically prescribed in other parts of the DEAR. The Department will review such requirements prior to finalization of this proposed rule and may redesignate appropriate paragraphs, in the final rule, to other parts of the DEAR, if necessary. If such requirements are identified, the Department will publish a **Federal Register** notice, prior to issuing a final rule, listing the paragraphs being considered for redesignation.

7. Section 970.7106, Procedures for handling mistakes relating to management and operating contractor purchases, is removed.

8. Section 970.7107, Protest of management and operating contractor procurements, is removed.

III. Public Comments

DOE invites interested persons to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in this rule. Three copies of written comments should be submitted to the address indicated in the ''ADDRESSES'' section of this rule. All comments received will be available for public inspection during normal work hours. All written comments received by the date indicated in the ''DATES'' section of this notice will be carefully assessed and fully considered prior to the effective date of these amendments as a final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to its determination in accordance with 10 CFR 1004.11.

IV. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993).

Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), the Department of Energy has determined that this proposed rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

C. Review Under the Paperwork Reduction Act

To the extent that new information collection or recordkeeping requirements are imposed by this rulemaking, they are provided for under Office of Management and Budget paperwork clearance package No. 1910–0300. No new information collection is proposed by this rule.

D. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This proposed rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

E. Review Under Executive Order 12612

Executive Order 12612 entitled ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The Department of Energy has determined that this proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable

effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

G. Public Hearing Determination

DOE has concluded that this proposed rule does not involve any significant issues of law or fact. Therefore, consistent with 5 U.S.C. 553, DOE has not scheduled a public hearing.

List of Subjects in 48 CFR Parts 933 and 970

Government procurement.

Issued in Washington, D.C. on February 24, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 933—PROTESTS, DISPUTES, AND APPEALS

1. The authority citation for part 933 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c)

933.170 [Removed]

2. Section 933.170 is removed.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

3. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

4. At 970.5204–22, revise paragraph (a) of the clause to read as follows:

970.5204–22 Contractor purchasing system.

(a) The contractor shall develop, implement, and maintain formal policies, practices and procedures to be used in the award of subcontracts consistent with DEAR 970.71. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with DEAR 970.7102. The contractor's purchasing performance will be evaluated against agreed-upon criteria in accordance with the performance criteria and measures clause(s) set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The Contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer.

* * * * *

970.7101 [Amended]

5. Section 970.7101 is amended by removing paragraphs (c) and (d).

970.7102 [Amended]

6. Section 970.7102 is amended at: paragraph (a) to remove the parenthetical at the end of the paragraph; paragraph (b)(3) by removing the words ''to assure that management and operating contractors implement DOE policies and requirements as defined in this subpart, in accordance with the contractor's accepted system and methods'' and adding in its place the words ''pursuant to FAR 44.2''; and paragraph (b)(4) by removing ''Subpart 944.3 and 970.7108'' and adding in its place ''970.7103.''

970.7103 [Revised]

7. Section 970.7103 is revised to read as follows: 970.7103 Contractor purchasing system.

The following shall apply to the purchasing systems of management and operating contractors:

(a) The objective of a management and operating contractor's purchasing system is to deliver to its customers on a timely basis those best value products and services necessary to accomplish the purposes of the Government's contract. To achieve this objective, contractors are expected to use their experience, expertise and initiative consistent with this subpart.

(b) The purchasing systems and methods used by management and operating contractors shall be well-defined, consistently applied, and shall follow purchasing practices appropriate for the requirement and dollar value of the purchase. It is anticipated that purchasing practices and procedures will vary among contractors and according to the type and kinds of purchases to be made.

(c) Contractor purchases are not Federal procurements, and are not directly subject to the Federal Acquisition Regulation. Nonetheless, certain Federal laws, Executive Orders, and regulations may affect contractor purchasing, as required by statute, regulation, or contract terms and conditions.

(d) Contractor purchasing systems shall identify and apply the best in commercial purchasing practices and procedures (although nothing precludes the adoption of Federal procurement practices and procedures) to achieve system objectives. Where specific requirements do not otherwise apply, the contractor purchasing system shall provide for appropriate measures to ensure:

(1) Acquisition of quality products and services at fair and reasonable prices;

(2) Use of capable and reliable subcontractors who either:

(i) Have track records of successful past performance, or

(ii) Can demonstrate a current superior ability to perform;

(3) Minimization of acquisition lead-time and administrative costs of purchasing;

(4) Use of effective competitive techniques;

(5) Reduction of performance risks associated with subcontractors, and facilitation of quality relationships which can include techniques such as partnering agreements, ombudsmen, and alternative disputes procedures.

(6) Use of self-assessment and benchmarking techniques to support continuous improvement in purchasing;

(7) Maintenance of the highest professional and ethical standards; and

(8) Maintenance of file documentation appropriate to the value of the purchase and which is adequate to establish the propriety of the transaction and the price paid.

970.7104 through 970.7104–47, 970.7106, 970.7107 [Removed]

8. Sections 970.7104 through 970.7104–47 970.7106, and 970.7107 are removed.

[FR Doc. 95–5173 Filed 3–1–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[FRA Docket No. RSGC–6; Notice No. 1]

RIN 2130–AA92

Selection and Installation of Grade Crossing Warning Systems; Notice of Proposed Rulemaking

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: FRA proposes to prohibit railroads from unilaterally selecting and installing highway-rail grade crossing warning systems at public highway-rail crossings. FRA further proposes to require that railroads furnish state highway authorities with information necessary for state grade crossing project planning and prioritization purposes.

DATES: (1) Written comments must be received no later than May 16, 1995. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) A public hearing will be held at 9:30 a.m. on May 9, 1995. Any person who wishes to speak at the hearing should notify the FRA Docket Clerk at least five working days before to the hearing, by telephone or by mail.

ADDRESSES: (1) Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

(2) A public hearing will be held in room 2230 of the Nassif Building, 400 Seventh Street, SW., Washington, DC Persons desiring to speak at the hearing should notify the Docket Clerk by telephone (202–366–0628) or by writing to the Docket Clerk at the address above.

FOR FURTHER INFORMATION CONTACT: Bruce F. George, Chief, Highway-Rail Crossing and Trespasser Programs Division, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0533), or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION: This NPRM clarifies the respective responsibilities of railroads and state and local governments regarding the selection and installation of highway-rail grade crossing warning systems. This proposal is issued to eliminate confusion and uncertainty as to the role of railroads in the selection and installation process. FRA expects the proposed rules to ''substantially subsume'' the subject matter of railroads' selection and installation of highway rail grade crossing warning systems and as such will preempt state laws covering the same subject matter.

Background

Highway-rail grade crossings present inherent risks to users, including motorists, pedestrians, railroad passengers and railroad employees. Of the more than 168,000 public highway-rail grade crossings in the nation, only 28,100 are fully equipped with automatic lights, gates and bells; fewer than 1,000 of the 108,000 private crossings are so equipped. The vast majority of public crossings (and private crossings) are equipped with only passive warning devices such as crossbucks. Engineering improvements at individual crossings, education of the public, and enforcement of highway traffic laws have reduced accidents and casualties at highway-rail crossings. Since 1978, accidents and fatalities have decreased dramatically despite increased highway usage, stable rail traffic levels, and increased train speeds. However, the present loss of life, injuries and property damage are still unacceptable. Highway-rail collisions are the number one cause of death in the entire railroad industry, far surpassing employee or passenger fatalities. Additionally, the proportion of severe accidents (i.e., those likely to result in fatalities) is rising. Nearly 4,900 collisions occurred between highway users and on-track railroad equipment in 1993. More than 600 people were killed and over 1,800 were seriously injured in these collisions.

In 1973 Congress first established the Rail-Highway Crossing Program (section 130 program) to improve highway-rail crossing safety. Continuous federal funding since then has made more than $3 billion available in improvement funds, representing more than 90% of project costs under this program. Because highway-rail grade crossing safety is primarily achieved through highway traffic control, DOT'S Federal Highway Administration (FHWA) has oversight responsibility for the program. See 49 CFR 1.48.

State Safety Prioritization Process

FHWA regulations provide uniform federal standards for all highway traffic control systems, including those at highway-rail crossings. The federal government, rather than dictating the specific type of warning system to be installed at each of the nation's 168,000 public grade crossings, has established the outline of the required planning and selection process. FHWA has adopted regulations governing the process by which states are to establish priorities for implementing highway safety improvement projects, including projects for elimination of hazards of highway-rail grade crossings.

FHWA's regulations detail the uniform planning process involved in selecting the crossings to be improved (23 CFR Part 924.) The planning component of a state's highway safety improvement program is required to incorporate a process for collecting and maintaining a record of accident, traffic, and highway data including characteristics of both highway and rail traffic. The planning component must also contain a process for analyzing data to identify hazardous highway locations based on accident experience or accident potential as well as containing a process for conducting engineering studies of hazardous locations. Of vital importance in ensuring that limited funds are spent in a manner that will achieve the greatest safety return, a state's safety improvement program is required to have a process for establishing priorities for implementing highway safety improvement projects. That process must consider the potential reduction in the number and/or severity of accidents; the cost of the projects and resources available; the relative hazard of public highway-rail crossings based on a hazard index formula; on-site inspections of crossings; potential danger to large numbers of people at crossings used on a regular basis by passenger trains, buses, pedestrians, bicyclists or by trains and motor vehicles carrying hazardous materials; and other criteria as appropriate in each state. 23 CFR 924.9.

As a review of the planning and prioritization components shows, the process outlined above could only be carried out by an entity capable of gathering and analyzing all the needed data. A railroad has only data available

to it which is railroad specific: rail traffic volume, authorized speed, number of tracks, type of train control system, and projected changes in these areas. Even accident data available to a railroad are of uncertain benefit since they are limited to the experiences of that one railroad rather than compared and collated with similar data from other railroads in the state or even other railroads whose tracks are crossed by the same highway.

The federal government has recognized that individual entities such as railroads do not have the requisite analytical tools and information gathering ability to make the appropriate decisions regarding the most appropriate focusing of limited safety improvement funds. State agencies have the necessary analytical tools and information. It is therefore appropriate that they have the responsibility for the actual selection of specific crossings and the determination of the type of warning devices to be installed.

The Secretary, through FHWA, has also issued standards governing the form and placement of all grade crossing warning systems irrespective of whether federal funds are used in their installation. 23 CFR 646.214. FHWA's Manual on Uniform Traffic Control Devices (MUTCD), incorporated by reference into the Code of Federal Regulations (23 CFR 655.601), establishes ''traffic control device standards for all streets and highways open to public travel regardless of type or class or the governmental agency having jurisdiction.'' MUTCD 1A–2. The MUTCD establishes uniform standards relating to design and placement of traffic control signs, pavement markings and automatic warning devices. These standards apply nationwide—even when the improvements have not been paid for with federal funds.

DOT Safety Initiatives

This proposed rule is but one component of a continuing DOT campaign to improve grade crossing safety. DOT's Grade Crossing Action Plan includes several initiatives that will aid in improving safety at grade crossings. This plan details six major Departmental initiatives encompassing 55 separate actions addressing highway-rail grade crossing safety and trespass prevention. These initiatives include: enhanced enforcement of traffic laws at crossings; enhanced rail corridor crossing reviews and improvements; expanded public education and Operation Lifesaver activities; increased safety at private crossings; improved data and research efforts; and prevention of rail trespassing.

A cornerstone of this grade crossing safety campaign is the closure and consolidation of little used and redundant crossings. It is generally acknowledged that there are too many highway-rail grade crossings in this country—there are not sufficient resources from any source or sources to provide full warning systems or grade separations at all of the nation's crossings. Too many crossings are equipped only with crossbuck warning signs. Elimination of poorly designed, less travelled, and redundant crossings will clearly enhance the safety of the travelling public. FRA has thus been advocating consolidation and closure for a number of years. FRA's role of advocate reflects the fact that state and local governments have the authority to close and consolidate crossings just as they have the authority to create crossings in connection with public road construction.

This rulemaking is one in a series of rules addressing the responsibilities of the various parties in this critical rail safety area. On September 27, 1994, FRA issued maintenance, inspection, and testing rules (59 FR 50086, September 30, 1994). Those rules for the first time impose specific responsibilities on railroads to maintain, inspect and test active highway-rail grade crossing warning systems. Additionally, FRA imposed on railroads the responsibility to take specified actions when grade crossing warning systems malfunction. The rules impose costs on railroads in addition to the more than $130 million they spend on crossing maintenance every year. The allocation of responsibility to railroads regarding grade crossing maintenance, inspection, and testing and response to malfunctions reflects reality—railroads are the appropriate party to perform these activities. They have the technical expertise and forces to perform the work. Safety is enhanced by such allocation of responsibility.

Similarly, responsibilities have been allocated between railroads and state and local agencies by the Congress in the Swift Rail Development Act of 1994 (Pub. L. 103–440). Section 302 of that act directs the Secretary of Transportation to issue regulations requiring that a locomotive horn be sounded while each train is approaching and entering each public grade crossing unless certain supplementary safety measures are provided by the ''appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing.'' Congress has implicitly recognized that railroads have responsibility in areas over which they have control, such as sounding of horns, while state and local traffic control authorities have responsibility pertaining to those areas within their expertise and under their control, namely, highway traffic control.

The NPRM

This NPRM would also define responsibilities in the grade crossing area. It defines the responsibility of railroads to provide information and assistance in those areas in which their expertise is paramount—railroad operations. Railroads would be required to provide appropriate state agencies information related to their operations and to participate with state or local diagnostic teams to help the state or local governmental body determine which crossings' warning systems should be upgraded and to what extent.

This allocation of responsibility to railroads is based on the recognition that state and local governmental bodies are the entities with the expertise and information to look at the entire picture (of which railroad traffic and plans are but one component): whether crossings should be consolidated or closed; funding availability; funding constraints; local desires; area residential, commercial and industrial development plans; and highway traffic engineering demands and constraints. Consistent with that expertise and information base, state and local governmental bodies are the appropriate bodies to determine which, how, and when highway rail grade crossing warning systems should be upgraded. Because of the very high cost to install an automatic traffic control warning system at a grade crossing—more than $100,000 at a double track crossing—it is imperative that the limited safety funds, from whatever sources, available for crossing improvements be spent in a rational, uniform, and coordinated manner. The present system whereby states, pursuant to FHWA regulations, investigate, plan, and prioritize crossing improvements provides the needed uniformity and coordination to ensure that the crossings most in need of safety improvements are those that receive them. Grade crossing safety is best enhanced by such a program that provides for a systematic upgrading of traffic control devices at crossings that are truly needed pursuant to a prioritized schedule established by state authorities under uniform federal criteria. Such a program allows state highway officials the ability to respond to the concerns of the public in making grade crossing improvement decisions,

and allows available resources to be allocated to the grade crossing improvement projects yielding the highest safety returns. Simply stated, this will save more lives than if an equal amount of money were spent on upgrading crossings that statistically are not as dangerous.

In other, less frequent situations, a state agency, local governmental body, or state or local legislative body may, outside of the Federal-aid program, fund the upgrading of a warning system at a specific crossing or order a railroad to install or upgrade a warning system at its own expense. These proposed rules are not meant to prevent those governmental authorities from being involved in such activities. Although the selection decision in these situations may not be based on the selection and installation criteria established by FHWA and adopted by the state department of transportation or highway department, presumably the governmental body's selection decision is based on sound public policy and overall safety considerations derived from information available to the state.

Some state laws, generally predating the advent of the Federal Rail-Highway Crossing Program, impose a tort law duty upon railroads to maintain safe crossings. In some cases this duty has been interpreted to include a duty to select and install warning systems at hazardous crossings. While this system may have been appropriate in the past, when there was no systematic and uniform improvement program in existence, today the result is one of misallocation of scarce resources. This ad hoc system of grade crossing improvements, driven by tort law and individual jury awards, runs counter to the goal of a uniform national program based on planning and prioritization. Those ofttimes arbitrary local requirements can result in the installation of grade crossing warning systems, not where research and data indicates they will do the most good, but where a judge or jury determined, after the fact, that such a system should have been installed.

Jury verdicts based on common law standards are necessarily ad hoc, case-by-case judgements that are retrospective in nature. The duties now imposed upon railroads ad hoc in this manner are inconsistent with the command of Congress that ''[l]aws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable.'' (49 U.S.C. 20106) These verdicts do not provide an appropriate mechanism for determining whether the crossing is needed in the first place, and if needed, what warning devices are appropriate. Neither do these verdicts provide an appropriate method for determining the order in which crossings would be equipped or upgraded to yield the greatest safety benefits. Moreover, these judgments divert resources from saving lives through investments in grade crossing warning devices to compensating those killed or injured in accidents or their survivors. This is sound public policy only when the railroad has breached a duty to them that it is appropriate for the railroad to have.

In this proposed rule, FRA is defining in a nationally uniform manner the safety duties railroads have in connection with the selection and installation of warning devices at grade crossings. Tort judgments in general certainly exert a salutary deterrent influence on behaviors that rational actors can avoid, but here that deterrent is distorted and diminished by the combination of (i) the lack of adequate funds, public or private, to improve all grade crossings to the desired level of safety, (ii) the focus of tort cases on whether a railroad has satisfied its common law duties at the grade crossing in question without regard to its behavior concerning grade crossings in general, and (iii) large judgments for accidents at grade crossings of low relative hazard. As things now stand, a railroad that is responsibly investing its available funds for the improvement of grade crossings in the order and in the manner specified by the transportation authorities in the states it serves may be subjected to large tort judgments resulting from the relatively random occurrence of accidents at grade crossings of low hazard relative to those improved. The proposed regulations are meant to ensure that the present system is not compromised by state requirements that railroads select and install grade crossing improvements outside of the coordinated and prioritized federal/state system already established.

The Supreme Court, in a recent decision, *CSX Transportation, Inc.* v. *Easterwood,* (113 S. Ct. 1732, (1993)) held that legal duties imposed on railroads by a State's common law of negligence fall within the scope of the preemption provision of 49 U.S.C. 20106, (formerly § 205 of the Federal Railroad Safety Act (45 U.S.C. § 434)). However, the Court held that preemption of such state laws will lie only if the federal regulations substantially subsume the subject matter of the relevant state law.

FRA expects the proposed rules will ''substantially subsume'' the subject matter of railroads' selection and installation of highway rail grade crossing warning systems and as such will preempt state laws covering the same subject matter, regardless of whether Federal funding of improvements is involved at a particular crossing.

In *Easterwood*, the Court held that ''for projects in which federal funds participate in the installation of warning devices, the Secretary has determined the devices to be installed and the means by which railroads are to participate in their selection. The Secretary's regulations therefore cover the subject matter of state law which, like the tort law on which respondent relies, seeks to impose an independent duty on a railroad to identify and/or repair dangerous crossings.'' 123 L. Ed. 2d at 401.

The Department believes that the distinction in safety duties drawn in *Easterwood* depending upon whether or not improvements to a particular grade crossing were federally funded results in poor public policy that is likely to misallocate scarce funds for grade crossing improvements because railroads are given a powerful financial incentive either (i) to invest funds in improving crossings on some basis other than the relative hazard rankings established by state highway authorities or (ii), especially in the case of small railroads, to diminish investment in grade crossing improvements because they cannot tell where an adverse verdict may strike next and their net financial results may be better served by using the funds to pay judgments they are unable to avoid. Railroad and highway safety alike are best served by focusing the economic and legal incentives of everyone involved in the process to invest grade crossing improvement funds where the most lives will be saved and the most injuries prevented. The proposed rule is intended to achieve that result.

If, as the Department has recommended in its Highway-Rail Grade Crossing Action Plan, state transportation authorities also begin evaluating the hazards of grade crossings on entire rail corridors, the proposed rule would accommodate improvements focused in that manner. That is simply another way for state transportation authorities to systematically evaluate the relative safety of highway rail grade crossings and to decide which improvements will yield the best safety results.

Moreover, highway rail grade crossing warning systems are devices to control motor vehicle traffic on highways. Government bodies responsible for

highways and motor vehicle safety are the appropriate decision makers to decide which devices should be installed on public highways and the order in which intersections should be improved.

Railroads should be responsible for providing information to help state highway authorities make those decisions and for helping to implement those decisions after they are made. In fulfilling the requirements of FHWA's Highway Safety Improvement Program (49 CFR Part 924), state agencies have a need for railroad information that might have an impact on the type of improvement appropriate to a particular crossing or that might affect the relative priority to be given in upgrading one crossing versus another. Such data include present and projected rail traffic (both hazardous and non-hazardous materials), track configuration, signalling, and authorized train speed as well as other conditions affecting the crossing. Railroads have historically provided assistance to state agencies planning for grade crossing improvements. The proposal would codify railroads' present practice of providing information and assistance needed by those state agencies.

The proposal will not affect railroads' present obligations to maintain grade crossing warning systems. Indeed, as noted above, FRA's recently issued amendments to Grade Crossing Signal System Safety regulations codify specific maintenance, inspection, and testing requirements for grade crossing warning systems.

While this proposed rule prevents a railroad from unilaterally selecting and installing warning systems, it does not prevent a state agency from ordering a railroad to pay for all or part of grade crossing warning system on a non-Federal aid project. While FRA is philosophically opposed to the concept of a railroad being forced to pay for an upgrade to what is essentially a highway traffic control device for which it receives no net benefit (see 23 CFR 210(b)), FRA is not prepared at this time to issue regulations preempting the many state laws in this area.

Section-by-Section Analysis

§ 234.301 Railroad cooperation.

Paragraph (a) of this section requires that railroads cooperate with the appropriate state agency in furnishing information to enable the state to develop plans and project priorities for the elimination of hazards of highway-rail grade crossings. Railroad plans to increase traffic on a line or to upgrade track or signalling to enable increases in train speed, are important factors which states must take into consideration in determining their prioritization and plans. Similarly, state planners need information regarding railroad plans or projections regarding decreasing traffic volume. Railroads have generally provided such information on a voluntary and routine basis. This provision codifies the responsibility of a railroad to provide current and projected information which is uniquely available to the railroad. Without railroad information a state is unable to make the appropriate decisions to determine which crossings should be upgraded and with which type of warning systems. Many railroads already provide information such as current train counts, speeds, type and number of tracks and type of installed warning system to FRA or the state for inclusion in the DOT/Association of American Railroads National Highway-Rail Grade Crossing Inventory (Inventory) on file with FRA. Duplicate submissions to a state are not necessary under this rule inasmuch as Inventory data is routinely available to States.

Presently, information submissions by States and railroads to the Inventory are made on a voluntary basis. Comments are specifically invited regarding the advisability of making Inventory information submission mandatory.

This section also provides that a railroad need not submit proprietary data of a confidential nature to a state unless that information will be protected from disclosure. Such provision will ensure that railroads will not be penalized commercially by such regulatory compliance.

Paragraph (b) of this section requires that railroads provide appropriate engineering and other technical assistance to the state agency in designing and installing the warning system determined by the state to be appropriate to the particular crossing. In many instances a railroad is the only party with the requisite technical expertise to assist the state in developing the engineering design for the crossing. This section recognizes that fact and therefore establishes a duty to assist in this area.

§ 234.303 Selection and installation of warning systems at public crossings.

Paragraph (a) of this section prohibits a railroad from unilaterally selecting or determining the type of grade crossing warning system to be installed at a public highway-rail grade crossing. Such a decision is more appropriately made by the state or local government. In some situations today, a railroad voluntarily contributes to the cost of installing a crossing warning system. In some cases, a railroad has voluntarily contributed all or part of a locality's required local share in order to enable a particular crossing to be improved with federal funds. The proposed rule is not meant to alter this practice of voluntary railroad involvement. Similarly, this rule is not meant to affect those situations in which a railroad improves a crossing at its own expense in order to secure the closure of another crossing. These railroad practices, unlike funding of projects outside of the state planning process, are supportive and consistent with the prioritization and planning process. Therefore, nothing in the proposal prevents a railroad from voluntarily contributing to the installation costs of warning devices installed pursuant to the state planning process.

Paragraph (b) addresses installation of the warning system after the specific grade crossing and type of warning system has been selected. This paragraph provides that a railroad shall only install or upgrade a grade crossing warning system at a public highway-rail grade crossing pursuant to an order by, or agreement with, a state agency or other public body having authority to issue such order or enter into such agreements. The proposal provides that whenever such state agency or other public body determines that a particular grade crossing warning system should be installed at a particular highway-rail grade crossing, the railroad shall comply with any legally sufficient order, or in the case of federally funded grade crossing projects, enter into and perform an agreement for the installation or upgrade of that grade crossing warning system with the state agency or other public body having jurisdiction. The rule does not require a railroad to provide the non-federal share of costs involved in federally-funded grade crossing improvement projects.

This section recognizes that since the warning system is, in many instances, tied into the railroad's track circuits and the railroad will maintain the system, the railroad is generally the most appropriate party to physically install the system. Under the present Federal-aid system, railroads are reimbursed for procurement and installation costs of the warning system. This paragraph recognizes the benefits of this process and only prohibits railroads from unilaterally installing grade crossing warning systems without state or local approval.

This section is not meant to prohibit a railroad's voluntarily contribution to the costs of installation of a highway-rail grade crossing warning system.

Railroads have voluntarily contributed all or a portion of the non-Federal matching share required under Federal law for construction of grade crossing warning systems. FRA does not intend to prevent or discourage such contributions.

While FRA believes that railroads have many powerful incentives to continue their longstanding policy of voluntarily providing matching funds for federally funded grade crossing projects, comment is sought concerning whether this proposal will affect the level of railroad participation in such projects.

Paragraph (c) addresses railroad projects in which warning system improvements are only incidental to the railroad project. Some railroad projects, such as new track, upgraded track, or the installation of signal systems, may involve upgrading warning system circuits or the replacement of obsolete equipment with newer, more technologically advanced equipment. This rule is not intended to prohibit railroad's present practice of incidental upgrades.

Regulatory Impact

E.O. 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and is considered to be significant under DOT policies and procedures (44 FR 11034, February 26, 1979). This regulatory document was subject to review under E.O. 12866. FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economic impact of this rule. A copy of the regulatory evaluation may be inspected and copied in Room 8201, 400 Seventh Street, S.W., Washington, D.C., 20590.

In its regulatory analysis FRA posited that the costs and benefits of this proposed rule are not measurable at present, but that the benefits will equal or exceed the costs, because the function of the rule is to virtually eliminate grade crossing selections and installations which do not require an analysis which considers costs and benefits.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. In reviewing the economic impact of the proposed rule, FRA has concluded that it will have a minimal economic impact on small entities. There is no direct or indirect economic impact on small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

The proposed rule contains information collection requirements. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The proposed section that contains information collection requirements is § 234.301. Persons desiring to comment on this topic should submit their views in writing to FRA (Ms. Gloria Swanson, RRS–21, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590) and to the Office of Management and Budget (Desk Officer, Regulatory Policy Branch (OMB No. 2130–AA92), Office and Management and Budget, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. 20530. Copies of any such comments should also be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590.

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedure for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule has sufficient federalism implications to warrant the preparation of a Federalism Assessment. A copy of the Federalism Assessment has been placed in the public docket and is available for inspection.

List of Subjects in 49 CFR Part 234

Railroad safety, Highway-rail grade crossings.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend Part 234, Title 49, Code of Federal Regulations as follows:

PART 234—[AMENDED]

1. The authority citation for Part 234 continues to read as follows:

Authority: 49 U.S.C. 20103, 20106, 20107, 20111, 20112, 20134, 21301, 21304, and 21311 (formerly Secs. 202, 208, and 209 of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 434, 437, and 438, as amended)); 49 U.S.C. 20901 and 20102 (formerly the Accident Reports Act (45 U.S.C. 38 and 42); and 49 CFR 1.49 (f), (g), and (m).

2. Add a new ''Subpart E—Selection and Installation of Grade Crossing Warning Systems,'' to read as follows:

Subpart E—Selection and Installation of Grade Crossing Warning Systems

Sec.
234.301 Railroad cooperation.
234.303 Selection and installation of grade crossing warning systems.

§ 234.301 Railroad Cooperation.

(a) Railroads shall cooperate with the appropriate state agency in furnishing information to enable the state agency to develop plans and project priorities for the elimination of hazards of highway-rail grade crossings including, but not limited to grade crossing elimination, reconstruction of existing grade separations, and grade crossing improvements. At the request of the appropriate state agency, a railroad shall provide information not already provided to the FRA or the state for inclusion in the DOT/Association of American Railroads National Highway-Rail Grade Crossing Inventory regarding railroad operations involving specific highway-rail grade crossings, including, but not limited to: present and projected rail freight traffic (including transportation of hazardous materials); present and projected passenger traffic; present and projected track configuration and signalling; present and projected maximum authorized train speed; and other conditions which may affect the planning for, and prioritization of, crossing improvements. Nothing herein requires that a railroad provide to a state proprietary data of a confidential nature unless such information shall be protected from disclosure.

(b) Railroads shall provide appropriate engineering and other technical assistance to the state agency in designing and installing the warning system determined by the state to be appropriate to the particular crossing.

§ 234.303 Selection and installation of grade crossing warning systems.

(a) A railroad shall not unilaterally select or determine the type of grade crossing warning system to be installed at a public highway-rail grade crossing.

(b) Subject to paragraph (c), a railroad shall only install or upgrade a grade crossing warning system at a public highway-rail grade crossing pursuant to an order by, or agreement with, a state agency or other public body having authority to issue such order or enter into such agreements. Whenever such state agency or other public body determines that a particular grade crossing warning system should be installed at a particular highway-rail grade crossing, the railroad shall comply with any legally sufficient order, or in the case of federally funded grade crossing projects, enter into and perform an agreement for the installation or upgrade of that grade crossing warning system with the state agency or other public body having jurisdiction. Nothing herein shall require a railroad to provide the non-federal share of costs involved in federally-funded grade crossing improvement projects.

(c) A railroad is permitted to upgrade, at its own expense, components of a public highway-rail grade crossing warning system when such upgrade is incidental to a railroad improvement project relating to track, structures or train control systems.

3. Amend Appendix A by inserting in numerical order new entries to read as follows:

APPENDIX A TO PART 234.—SCHEDULE OF CIVIL PENALTIES

Section	Violation	Willful violation
* * *	*	*
234.301 Railroad co-operation	$5,000	$7,500

APPENDIX A TO PART 234.—SCHEDULE OF CIVIL PENALTIES—Continued

Section	Violation	Willful violation
§ 234.303 Selection and installation of grade crossing warning systems	5,000	7,500
* * *	*	*

Issued in Washington, D.C. on February 24, 1995.

Jolene M. Molitoris,

Administrator.

[FR Doc. 95–5100 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register

Vol. 60, No. 41

Thursday, March 2, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

[4310–84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Interim Strategy for Managing Anadromous Fish-Producing Watersheds on Federal Lands in Eastern Oregon and Washington, Idaho, and Portions of California

AGENCY: Forest Service, USDA; Bureau of Land Management, Interior.

ACTION: Notice of decision and availability of environmental assessment and finding of no significant impact.

SUMMARY: On February 24, 1995, the Chief of the Forest Service and the Acting Director of the Bureau of Land Management signed a decision adopting an interim strategy for managing anadromous fish-producing watersheds on lands administered by the Forest Service and Bureau of Land Management in Eastern Oregon and Washington, Idaho, and portions of California. The decision amends Regional Guides and Forest land and resource management plans that guide the management of National Forest System lands and where compatible, provides management direction consistent with Bureau of Land Management land use plans and, thereby, establishes interim goals, objectives, and standards and guidelines for these anadromous fish-producing watersheds. The intended effect of this decision is to provide additional protective management to the watersheds in the affected areas so as to avoid limiting the choice of reasonable alternatives that may be developed in the geographically specific environmental analyses of long-term management strategies are being conducted.

EFFECTIVE DATE: For the Forest Service, this decision is effective on March 9, 1995. For the Bureau of Land Management, this decision is effective on April 3, 1995.

ADDRESSES: The decision documents, Finding of No Significant Impact, and Environmental Assessment may be reviewed at the Office of the Wildlife, Fish, and Rare Plants Staff, Forest Service, USDA, Auditors Building, 14th and Independence Avenue, SW, Washington, DC. Single copies of these documents are available by request from this office as well as from Forest Service regional offices and national forests or Bureau of Land Management state offices in the affected areas.

FOR FURTHER INFORMATION CONTACT: Harv Forsgren (Forest Service) at (202) 205–1791, or Richard Hardt (BLM) at (202) 452–5074. To request a copy of the decision document, Finding of No Significant Impact, and Environmental Assessment by phone, call (202) 205–1791.

SUPPLEMENTARY INFORMATION: The Forest Service and Bureau of Land Management have developed an ecosystem-based interim management strategy for Pacific anadromous fish (i.e., salmon, steelhead, and sea-run cutthroat trout) in response to large declines in anadromous fish populations and widespread degradation of habitat conditions. For the Forest Service the decision amends the Regional Guides for the Forest Service's Northern, Intermountain, Pacific Southwest, and Pacific Northwest Regions and 15 National Forest land and resource management plans (forest plans) to incorporate explicit goals and riparian objectives, and identify those areas where the new interim standards and guidelines will apply. For the Bureau of Land Management, the decision incorporates management direction consistent with seven Bureau of Land Management land use plans to arrest the degradation and begin restoration of anadromous fish-producing watersheds.

Alternative 4 was selected as the interim management direction from five alternatives analyzed in the March 1994 environmental assessment. Notice of the availability of the environmental assessment was published in the **Federal Register** on March 25, 1994 [58 FR 14356]. Comments received from the general public as well as other Federal agencies and state and local government were considered in arriving at a final decision to adopt Alternative 4, which applies additional protective measures to all new activities and ongoing activities that are likely to adversely affect listed salmon or contribute to the need to list additional anadromous fish species under provisions of the Endangered Species Act. The direction is to be in place for an 18–month period while geographically-specific environmental analyses of long term management strategies are being conducted.

Forest Service and Bureau of Land Management biologists have prepared a biological evaluation and assessment, analyzing the potential effects of the alternatives on species listed under the Endangered Species Act and those species identified as sensitive by the agencies. The biologists determined the selected alternative ''may effect'' listed species and designated critical habitat within the anadromous fish-producing watersheds covered by the decision. Pursuant to that finding, the Forest Service and the Bureau of Land Management have consulted with the Department of Interior, Fish and Wildlife Service, and the U.S. Department of Commerce, National Marine Fisheries Service. The Fish and Wildlife Service, through a letter of concurrence, has indicated that the proposed decision would have a neutral or beneficial effect on listed species under their jurisdiction. The National Marine Fisheries Service, through a biological opinion, has determined that the proposed decision is not likely to jeopardize the continued existence of listed species under their jurisdiction or result in destruction or adverse modification of critical habitat.

Pursuant to section 102(2)(2) of the National Environmental Policy Act of 1969 and the Council on Environmental Quality Guidelines (40 CFR 1508.27), the Forest Service and Bureau of Land Management hereby give notice that the actions allowed under Alternative 4 (as adopted) are not a major Federal action and will not significantly affect, either individually or cumulatively, the quality of the human environment. Therefore, an environmental impact statement is not being prepared.

For the Forest Service, this decision may be appealed in accordance with the provisions of 36 CFR 217.7(a) by filing a written notice of appeal with the Secretary of Agriculture, in duplicate, within 45 days of the date of publication of this notice of availability. Review by the Secretary is discretionary. For the Bureau of Land Management, this decision may be appealed to the Department of the Interior, Board of Land Appeals, in accordance with the provisions of 43 CFR 4.20 to 4.31 and 43 CFR 4.400 to 4.415, by filing a written notice of appeal. The notice must be filed with the Director of the Bureau of Land Management within 30 days of the date of publication of this legal notice of availability.

Dated: February 24, 1995.

For the Forest Service:

Jack Ward Thomas,

Chief, USDA Forest Service.

Dated: February 24, 1995.

For the Bureau of Land Management:

Mike Dombeck,

Acting Director, USDI Bureau of Land Management.

[FR Doc. 95–5149 Filed 3–1–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region; AA Production, Inc.; Twin-Creeks-Unit; Grand Mesa, Uncompahgre and Gunnison National Forests; Gunnison County, CO

AGENCY: Forest Service, USDA.

ACTION: Cancellation of a notice of intent.

SUMMARY: On June 2, 1994 a Notice of Intent to prepare an environmental impact statement was published in the **Federal Register** on pages 28510–28512 entitled Forest Service; Rocky Mountain; AA Production, Inc.; Twin-Creeks-Unit; Grand Mesa, Uncompahgre and Gunnison National Forests; Gunnison County Colorado. The environmental impact statement was to examine a proposal by AA Production, Inc. to drill 4 coal bed methane wells and construct a transportation system to these wells near Paonia, Colorado. Upon publication of this notice in the **Federal Register,** the environmental analysis and the June 2, 1994 Notice of Intent is cancelled.

The responsible Bureau of Land Management official is Sally Wisley, Area Manager, San Juan Resource Area, Federal Building, 701 Camino Del Rio, Durango, Colorado 81301.

The responsible Forest Service official is Ray L. Kingston, Paonia District Ranger, Grand Mesa, Uncompahgre and Gunnison National Forests, PO Box 1030, North Rio Grande Avenue, Paonia, Colorado 81428.

Dated: January 9, 1995.

Ray L. Kingston,

District Ranger.

[FR Doc. 95–5095 Filed 3–1–95; 8:45 am]

BILLING CODE 3410–11–M

California Spotted Owl EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: This notice announces several open houses to which the public is invited to participate in information exchange regarding alternatives being considered in the California Spotted Owl Draft Environmental Impact Statement, as they affect the Plumas National Forest area.

MEETING DATES, TIMES, & ADDRESSES

April 3 from 1:30 p.m. to 4:00 p.m.

Butte County Library Conference Room, 1820 Mitchell Avenue, Oroville, CA

April 4 from 1:30 a.m. to 4:00 p.m.

Plumas County Library Conference Room, 445 Jackson Street, Quincy, CA

April 4 from 7:00 p.m. to 9:30 p.m.

Portola City Council Chambers, 35 Third Avenue, Portola, CA.

CONTACT PERSON FOR FURTHER INFORMATION: Lee Anne Schramel Taylor, Plumas National Forest Supervisors Office, 159 Lawrence Street, Quincy, CA 95971 (916) 283–2050

SUPPLEMENTARY INFORMATION: The Forest Service will release a Draft Environmental Impact Statement (DEIS) to amend the Pacific Southwest Regional Guide and Sierran Province Forest Plans with new management direction for the California Spotted Owl. The purpose of this meeting is to exchange information with the public regarding the Draft Environmental Impact Statement and the preferred alternative. The meeting will be informally structured. Members of the team that prepared the DEIS will be available to answer questions and discuss the DEIS. Visual media depicting the alternatives and selected environmental consequences will be displayed.

Mark J. Madrid,

Forest Supervisor.

[FR Doc. 95–5158 Filed 3–1–95; 8:45 am]

BILLING CODE 3410–11–M

AGRICULTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its next meeting to take place in Arlington, VA on Tuesday and Wednesday, March 14–15, 1995. The purpose of the meeting is to review the mission and programs of the Board following the request of the Vice President under the National Performance Review, Phase II. These meetings are closed to the public.

DATES: The meeting will be held on March 14–15, 1995.

ADDRESSES: The meeting will be held at: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14 (voice) and (202) 272–5449 (TTY).

Lawrence W. Roffee,

Executive Director.

[FR Doc. 95–5172 Filed 3–1–95; 8:45 am]

BILLING CODE 8150–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–805]

Amended Final Determination and Antidumping Duty Order: Stainless Steel Bar From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 2, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Fabian Rivelis, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230;

telephone: (202) 482–1756 or (202) 482–3853, respectively.

Amendment to the Final Determination

We are amending the final determination of sales at less than fair value of stainless steel bar from Spain to reflect the correction of ministerial errors made in the margin calculations in that determination. We are publishing this amendment to the final determination in accordance with 19 CFR 353.28(c).

Case History and Amendment of the Final Determination

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), on December 28, 1994, the Department of Commerce (the Department) published its final determination that stainless steel bar from Spain was being sold at less than fair value (59 FR 66931). Subsequent to the final determination, we received ministerial error allegations by both petitioners and respondents in this investigation.

On January 12, 1995, petitioners made a timely allegation that the Department made ministerial errors in its final determination. First, they alleged that the Department made two incorrect adjustments to the reported difference-in-merchandise (difmer) data for respondent Roldan, S.A. (Roldan). Petitioners alleged that, in order to correct a discrepancy in Roldan's reported variable manufacturing costs for certain U.S. and home market sales, the Department increased the variable cost of manufacture (COM) for difmer purposes by adding to the home market difmer costs reported by Roldan when, in fact, the home market difmer adjustment should have been subtracted.

Furthermore, petitioners argued that the Department should not have made a similar difmer adjustment to Roldan's reported variable COM for U.S. sales because the discrepancy was confined to Roldan's home market variable COM data.

Respondent agreed with petitioner that the Department should have subtracted, rather than added, from its difmer data in order for it to correspond to its COP data. However, respondent argued that the petitioners were incorrect in their assertion that the discrepancy was confined only to Roldan's home market sales data. Consequently, respondent argued that the adjustment should have been made to the difmer data of both U.S. and home market sales.

We agree that this error constitutes a ministerial error as defined by Section 751(f) of the Tariff Act of 1930, as amended (the Act), which states that a ''ministerial error'' is ''an error in addition, subtraction or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial.'' We agree that the Department made a mathematical error when adjusting the respondent's difmer information. Furthermore, we agree with the respondent that this adjustment should have been made to its U.S. difmer information as well as its home market difmer information. We made the proper adjustments in our margin calculations and the resulting margin did not change from the margin calculated for the final determination.

Second, petitioners noted that the Department did not calculate margins for several of Roldan's U.S. sales that did not have product matches or constructed value data. Petitioners argued that the Department should have used the highest non-aberrational margin calculated for individual sales to calculate margins for these sales.

Respondent stated that the Department correctly deleted the sales for which there were no product matches from the margin calculation.

We have analyzed the information submitted by Roldan and have concluded that the Department made a ''ministerial error'' under Section 751(f) of the Act. We inadvertently omitted these sales in our concordance before they could be matched to the appropriate home market products. We have corrected this problem and calculated a margin for the sales in question.

On January 13, 1995, Acenor, S.A. (Acenor), a mandatory respondent that withdrew from the investigation, and Roldan, made timely allegations that the Department made ministerial errors in its final determination. Acenor alleged that its deposit rate was based on data presented in a sales below cost of production (COP) allegation which was determined to be invalid by the Department.

Petitioners argued that because Acenor was no longer an interested party in the investigation, the firm of George V. Egge Jr., P.C. could no longer represent itself as counsel for Acenor and submit a ministerial error allegation on its behalf. Petitioners further suggested that if the Department were to modify the best information available (BIA) rate applied to Acenor, it should have used the highest individual margin calculated in the preliminary determination using Acenor's own data.

We disagree with petitioners that Acenor is no longer an interested party. The fact that Acenor decided to withdraw from further participation does not change the fact that they are a named respondent who participated substantially throughout most of the investigation. We also disagree with respondent that the Department made a ministerial error in calculationg its BIA rate. We determine that this issue is methodological and was improperly raised as a ministerial error under Section 751(f) of the Act.

Roldan claimed that over half of its U.S. sales were improperly matched to home market sales made at a different level of trade. Petitioners argued that Roldan's argument is not a ministerial error allegation and should be rejected. We agree with petitioners that this allegation is not ministerial in nature, but rather a methodological question.

On January 19, 1995, petitioners commented on respondent's allegation and on January 20, 1995, respondent commented on petitioners' allegation.

Scope of Order

The product covered by this order is stainless steel bar (SSB). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the

United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Act, on December 19, 1994, the Department made its final determination that SSB from Spain was being sold at less than fair value (59 FR 66931, December 28, 1994). On February 10, 1995, the International Trade Commission notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of imports of the subject merchandise.

Therefore, all unliquidated entries of SSB from Spain entered, or withdrawn from warehouse, for consumption on or after August 4, 1994, which is the date on which the Department published its notice of preliminary determination in the **Federal Register**, are liable for the assessment of antidumping duties.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all relevant entries of SSB from Spain. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''All Others'' rate applies to all exporters of subject merchandise not specifically listed below.

The *ad valorem* weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Acenor, S.A. (and all successor companies, including Digeco, S.A. and Clorimax, SRL)	62.85
Roldan, S.A.	7.72
All Others	25.77

This notice constitutes the antidumping duty order with respect to SSB from Spain 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 orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: February 24, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–5181 Filed 3–1–95; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Role of Federally Funded Research & Development Centers (FFRDC's) in DoD Mission

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Role of Federally Funded Research & Development Centers (FFRDC's) in DoD Mission will meet in open session on March 13, 1995 at the Institute for Defense Analyses, 2001 N. Beauregard Street, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Mr. Robert Nemetz at (703) 756–2096.

Dated: February 24, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–5080 Filed 3–1–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Combat Identification

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Combat Identification will meet in closed session on March 20–21, 1995 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate the DoD long term strategy and plan for development and fielding of a comprehensive situational awareness (SA) and combat identification (CID) architecture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: February 24, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–5081 Filed 3–1–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse of Williams Air Force Base (AFB), AZ

On February 17, 1995, the Air Force signed the Record of Decision (ROD) for the Disposal and Reuse of Williams AFB. The decisions included in this ROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) for the Disposal and Reuse of Williams AFB, filed with the Environmental Protection Agency on June 3, 1994.

Williams AFB closed on September 30, 1993, pursuant to the Defense Base Closure and Realignment Act of 1990 (DBCRA), (Pub. L. 101–510), and recommendations of the Defense Base Closure and Realignment Commission. This ROD documents the decisions made by the Air Force on the division of parcels, the method by which parcels are to be conveyed or transferred, and the mitigation measures to be adopted.

The decision in this ROD is to dispose of the aviation-related portion of Williams AFB in a manner that will enable the development of a regional airport with the capacity for expanding commercial and industrial development. This allows for the central theme of the proposed future land use plans discussed in the FEIS to be fully implemented. The Department of Defense (DoD) is retaining 10.74 acres for the U.S. Army Reserves, and 8 acres of the U.S. Air Force for continued military use. Four (4) parcels comprising 249 acres were declared excess to the needs of DoD and are reserved for transfer to other Federal Agencies: 1 acre for the National Weather Service, and 248 acres in perpetual easements for the Federal Aviation Administration (FAA). In total, approximately 4,023 fee acres are surplus to the needs of the Federal Government. The base has been divided

into twenty-eight (28) parcels of land including roadways and utilities. The airport parcel, including two (2) nonaviation revenue producing parcels, will be conveyed at no-cost via public benefit conveyance for airport purposes. The FAA has jurisdiction by law regarding reuse of the runways and associated facilities as a civilian airport. A decision, if any, by the FAA to approve an airport layout plan will be announced by a separate ROD issued by the FAA based on the analysis in the FEIS and any additional FAA analysis that may be required. Three (3) parcels will be assigned to the Department of Health and Human Services (HHS) for disposal as a public benefit conveyance for homeless assistance purposes and three (3) parcels will be assigned to the Department of Education for disposal as a public benefit conveyance for educational purposes. Seven (7) parcels are to be offered for negotiated sale, one (1) of which consists of a building only. The road network is an integral part of all the parcels. Primary roads may be conveyed by negotiated sale to an eligible public body. Secondary roadways that are completely within a parcel will be included as part of the parcel. The utility systems, such as gas and electric, are totally integrated systems, prohibiting their separation among the various parcels. Therefore, disposal of utility systems will include conditions under which the recipient must provide service to all parcels. The gas and electric systems, with appropriate easements for maintenance and repair, will be conveyed through negotiated sale to utility purveyors, or eligible public bodies. Water and wastewater systems are required to support redevelopment efforts and is contingent on the recipient continuing to provide the necessary service to all parcels. Therefore, water wastewater systems will be assigned to HHS contingent upon a formal request for conveyance for the protection of public health.

The implementation of the closure and reuse action and associated mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statutes and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and the environment.

Any questions regarding this matter should be directed to Mr. John E.B. Smith or Ms. De Carlo Ciccel at (703) 696–5540. Correspondence should be sent to: AFBCA/SP, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–5086 Filed 3–1–95; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board Meeting

The New World Vistas Panel Chairs of the USAF Scientific Advisory Board will meet on 28 February 1995 at Kirtland AFB, NM from 8:00 a.m. to 5:00 p.m.

The purpose of this meeting will be to conduct a mission briefing on New World Vistas related issues.

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) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–5148 Filed 3–1–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Army Science Board Notice of Closed Meeting

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

Name of Committee: Army Science Board (ASB).

Date of Meeting: 10 April 1995.

Time of Meeting: 0800–1700.

Place: USAMICOM—Huntsville, Alabama

Agenda: The Army Science Board's Ad Hoc Study on ''ASB Space and Missile Defense Organization'' will have its 5th meeting at the USAMICOM on 10 April 1995. This meeting will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specially subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matter to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–5131 Filed 3–1–95; 8:45 am]

BILLING CODE 3710–08–M

Board of Visitors, United States Military Academy; Meeting

AGENCY: United States Military Academy, DOD.

ACTION: Notice of open meeting.

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

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 21 March 1995.

Place of Meeting: Room S–120 (Hugh Scott Room), the Capitol, Washington, D.C.

Start Time of Meeting: Approximately 8:00 a.m.

Proposed Agenda: Election of officers; selection of Executive Committee; scheduling of meetings for remainder of year; and identification of areas of interest for 1995.

All proceedings are open. For further information contact Lieutenant Colonel John J. Luther, United States Military Academy, West Point, NY 10996–5000, Telephone (914) 938–5870.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–5150 Filed 3–1–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

OMB Clearance Request for Simplified Acquisition Procedures/FACNET

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of new request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Simplified Acquisition Procedures/ FACNET.

DATES: Comments may be submitted on or before May 1, 1995.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Title IX of the Federal Acquisition Streamlining Act of 1994 (the Act) amended the Office of Federal Procurement Policy Act (41 U.S.C. 401, *et seq*.) by adding new sections regarding the establishment of a program for the development and implementation of a Federal Acquisition Computer Network (hereinafter referred to as FACNET). FACNET is to be Governmentwide and will allow the electronic interchange of procurement information between the private sector and the Federal Government and among Federal agencies. Specific functions of FACNET are set forth under Section 30 of the Act.

Regulatory coverage on FACNET is included under FAR Subpart 4.5 in the draft proposed rule (FAR case 94–770). FAR section 4.503 will require contractors to register on a one-time basis with the Federal Contractor Registration System operated by the Defense Information Megacenter, Columbus, Ohio, in order to conduct business through electronic commerce (EC) with the Federal Government. Contractor registration information will be collected electronically as a prerequisite for conducting EC with the Federal Government. The process for collection of contractor information will use the Federal Implementation Conventions ANSI X12.838, Trading Partner Profile in accordance with the Federal Information Processing Standards 161(FIPS). These standards are published by the National Institute for Standards and Technology (NIST). The information required to be submitted as part of contractor registration is the same as that currently provided by the SF 129, Solicitation Mailing List Application; the SF 3881, ACH vendor/Miscellaneous Payment Enrollment Form for paper transactions. In addition, information pertaining to a contractor assignment of commercial and Government entity (CAGE) code (where applicable); electronic data interchange (EDI) capabilities, including ANSI X12 transaction set and version number status for production, testing, sending and receiving; and the registrant's value added network (VAN) or value added service (VAS) electronic communications number will also need to be provided as part of the registration process. Requiring information consistent with the existing forms that Government contractors are familiar with simplifies the process of gathering current, factual data to input into the Registration System. The additional information is information contractors should have readily available when they have established EC/EDI capability.

The information submitted by contractors will permit the Megacenter to establish a central repository for all vendors doing business with the Federal Government, information that will be accessible by all Government contracting activities. This will eliminate the need for contractors to submit the information to each individual contracting activity they are doing business with, which is the current practice.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *100,000*; responses per respondent; *1*; total annual responses, *100,000*; preparation hours per response, *25*; and total response burden hours, *25,000*.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *100,000*; hours per recordkeeper, *.25*; and total recordkeeping burden hours, *25,000*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB clearance request regarding Simplified Acquisition Procedures/FACNET, FAR case 94–770, in all correspondence.

Dated: February 21, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–4699 Filed 3–1–95; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–367–000]

Century Power Corp.; Notice of Filing

February 24, 1995.

Take notice that on February 23, 1995, Century Power Corporation tendered for filing a revised Notice of Cancellation. Century states that effective March 17, 1995 the following Rate Schedules will be canceled.

FERC Rate Schedule No. 10
FERC Rate Schedule No. 12
FERC Rate Schedule No. 14
FERC Rate Schedule No. 15

Century Power Corporation is also canceling, effective March 17, 1995, Service Agreements Nos. 1 through 23 contained in Century Power Corporation's FERC Tariff No. 1.

The following rate schedules and service agreements will remain in effect: FERC Rate Schedules 1, 17 and 18 and Service Agreements 24 and 25 under Tariff No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 2, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5152 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC95–9–000 et al.]

Detroit Edison Company, et al.; Electric Rate and Corporate Regulation Filings

February 23, 1995.

Take notice that the following filings have been made with the Commission:

1. Detroit Edison Co.

[Docket No. EC95–9–000]

Take notice that on February 10, 1995, the Detroit Edison Company (Detroit

Edison) tendered for filing pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824(b), and Part 33 of the Commission's Regulations under the Federal Power Act, 18 CFR Part 33, an Application for Authority to Establish a Parent Holding Company.

Detroit Edison states that a copy of its application has been served upon the Michigan Public Service Commission.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corporation and Green Mountain Power Corporation

[Docket No. ER95–571–000]

Take notice that on February 8, 1995, Central Vermont Public Service Corporation (''Central Vermont'') and Green Mountain Power Corporation (together the ''Parties'') tendered for filing a Transformer Joint Ownership Agreement.

The Parties request the Commission to waive its notice of filing requirement to permit the Agreement to become effective on the in-service date of the transformer. In support of its requests, the Parties state that allowing the Agreement to become effective as provided will enable the Parties and their customers to achieve mutual benefits. Additionally, Central Vermont requests that the Commission acknowledge that Central Vermont is not precluded from providing its customers with up to 50% of the transformer's MVA related capacity as a result of its 50% ownership in the transformer.

Comment date: March 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Kamine/Besicorp Allegany L.P.

[Docket Nos. QF88–292–003 and EL95–29–000]

Take notice that on February 17, 1995, Kamine/Besicorp Allegany L.P., (Kamine/Besicorp) tendered for filing a Petition For Temporary Waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA). Kamine/Besicorp requests the Commission to temporarily waive the operating and efficiency standards for qualifying cogenerating facilities as set forth in Section 292.205, 18 CFR 292.205 of the Commission's Regulations implementing Section 201 of PURPA, as amended, with respect to its cogeneration facility located in Hume, New York. Specifically, Kamine/Besicorp requests waiver of the operating and efficiency standards for the period of October 14, 1994, through December 31, 1994.

Comment date: Thirty days after publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5153 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–998–001 et al.]

Ocean State Power & Ocean State Power II, et al.; Electric Rate and Corporate Regulation Filings

February 22, 1995.

Take notice that the following filings have been made with the Commission:

1. Ocean State Power Ocean State Power II.

[Docket Nos. ER94–998–001 and ER94–999–001]

Take notice that on February 9, 1995, Ocean State Power and Ocean State Power II tendered for filing its compliance filing in the above-referenced dockets.

Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. South Carolina Gas & Electric Co.

[Docket No. ER95–64–001]

Take notice that on February 6, 1995, South Carolina Gas & Electric Company (SCG&E) tendered a compliance filing in the referenced docket in accordance with the Commission's January 6, 1995 Order in such docket. SCG&E states that the compliance filing has been served on all parties to the proceeding.

Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Gulf Power Co.

[Docket No. ER95–351–000]

Take notice that on February 6, 1995, Gulf Power Company tendered for filing a modification to its amendment to the Transmission Service Agreement between Gulf Power Company and Bay Resource Management, Inc. The purpose of this modification is to allow for the in kind payment of allowance costs prior to the EPA reporting date rather than at the time of the transaction.

Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Rig Gas Inc.

[Docket No. ER95–480–000]

Take notice that on February 8, 1995, Rig Gas Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Co.

[Docket No. ER95–511–000]

Take notice that on January 27, 1995, Southern California Edison Company tendered for filing a letter informing the Commission that effective February 28, 1995, the Supplemental Agreements to the 1990 Integrated Operations Agreements with the Cities of Azusa, Banning, and Colton, California will be terminated.

Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Power Service Corporation on behalf of Monongahela Power Co. The Potomac Edison Company and West Penn Power Company (''the APS Companies'')

[Docket No. ER95–570–000]

Take notice that on February 6, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies) filed a Supplement No. 1 to add two (2) customers to the Standard Generation Service Rate Schedule under which the APS Companies offer standard generation and emergency service to these customers on an hourly, daily, weekly, monthly or yearly basis.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, and all parties of record.

Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Central Maine Power Co.

[Docket No. ER95–572–000]

Take notice that on February 8, 1995, Central Maine Power Company (CMP), tendered for filing an Amendment to Central Maine Power Company Rate Schedule FERC No. 91 between CMP and Maine Public Service Company (MPS), entered into as of December 16, 1995 (Amendment). The Amendment amends the Agreement to increase the rate for transmission service and to update certain terms and conditions applicable to such service.

Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corp.

[Docket No. ER95–574–000]

Take notice that on February 9, 1995, Niagara Mohawk Power Corporation (Niagara), tendered for filing with the Commission an Interconnection and Transmission Services Agreement (Agreement) between Niagara and the City of Salamanca Board of Public Utilities required to increase the capability of the delivery point between Niagara and Salamanca. Niagara Mohawk requests that the Agreement become effective sixty days from the date of filing.

Comment date: March 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Kentucky Utilities Co.

[Docket No. ES95–7–002]

Take notice that on February 21, 1995, Kentucky Utilities Company (Kentucky) filed an amendment to its application in Docket Nos. ES95–7–000 and ES95–7–001 under § 204 of the Federal Power Act. By letter order November 23, 1994, Kentucky was authorized to issue not more than $100 million of unsecured promissory notes and commercial paper from December 1, 1994 through November 30, 1996, with a final maturity date no later than December 31, 1996. Kentucky requests that the authorization issued in Docket Nos. ES95–7–000 and ES95–7–001 be amended to increase the authorization amount from $100 million to $150 million.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5154 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. CP95–61–000 and CP95–62–000]

Columbia Gas Transmission Corp.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Majorsville/Crawford Storage Project and Request for Comments on Environmental Issues

February 24, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of facilities proposed in the Majorsville/Crawford Storage Project.[1] This EA will be used by the Commission in its decision-making process to determine if an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

In Docket No. CP95–61–000, Columbia Gas Transmission Corporation (Columbia) requests Commission authorization to temporarily deactivate the storage operations at its Majorsville-Heard Storage Complex to allow coal mining operations by the Consol Pennsylvania Coal Company and/or its affiliates. Columbia needs to deactivate its storage facilities when the coal mining operation is nearby since ''long wall mining'' typically causes surface subsidence which could result in adverse impact on the wells and pipelines. Once mining has ended, Columbia would determine if the facility can be reactivated or should be permanently abandoned.

At the Majorsville/Heard Storage Complex in Greene and Washington Counties, Pennsylvania and Marshall County, West Virginia, Columbia proposes to temporarily deactivate portions of the storage field for at least the next 13 years. This would include:

- Abandoning up to 238 wells; and
- Abandoning up to 60 miles of existing pipeline.

In Docket No. CP95–62–000, Columbia requests Commission authorization to increase its natural gas storage capability and to construct and operate additional facilities at its Crawford Storage Field and Crawford Compressor Station to offset the temporary deactivation of the Majorsville-Heard Storage Complex. Columbia proposes to increase:

- The storage capability of the Crawford Storage Field by 5 billion cubic feet (Bcf) to 52 Bcf;
- The annual withdrawals by 8.15 Bcf to 17.65 Bcf; and
- The design day deliverability by 67.2 million cubic feet per day (MMcfd) to 232.2 MMcfd.

At the Crawford Storage Field in Hocking County, Ohio, Columbia proposes to:

- Drill four new wells;
- Construct about 5.01 miles of pipeline, including:

—2.30 miles of 20-inch-diameter pipeline replacing 1.40 mile of 16-inch-diameter pipeline and 0.90 mile of 10- and 8-inch-diameter pipeline;
—0.80 mile of 10-inch-diameter pipeline replacing 0.80 mile of 4-inch-diameter pipeline;
—0.76 mile of 10-inch-diameter new pipeline;
—0.36 mile of 8-inch-diameter pipeline replacing 0.40 mile of 4-inch-diameter pipeline;
—0.45 mile of 8-inch-diameter new pipeline;
—0.32 mile of 6-inch-diameter pipeline replacing 0.30 mile of 4-inch-diameter pipeline; and
—0.02 mile of 6-inch-diameter new pipeline.

- Install other appurtenant facilities, including:

—Wellhead measurement stations at four new and two existing wells;
—Electric measurement cables within the right-of-way to the four new wells;
—Up to 10 pig launching/receiving facilities; and
—Valve replacement sets at six existing and one new well.

[1] Columbia Gas Transmission Corporation's applications in Docket Nos. CP95–61–000 and CP95–62–000 were filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

At the Crawford Compressor Station in Fairfield County, Ohio, Columbia proposes to:

- Add a third dehydration contactor and related reboiler and piping;
- Add a gas cooler to each of the three existing compressor units;
- Replace a compressor cylinder on one of the existing compressor units; and
- Add a gas cleaner and make other changes.

The general location of the project facilities is shown in appendix 1. Specific locations of the proposed Crawford Storage Field facilities are shown in appendix 2.[2]

Land Requirements for Construction

Majorsville/Heard Storage Complex

The temporary deactivation of the Majorsville/Heard Storage Complex facilities would require some construction activity. Abandonment of the pipelines (either in place or by removal) would occur within the existing right-of-way. Abandonment and plugging of the wells would require some disturbance in the immediate area of the well.

Crawford Storage Field

Construction and operation of the four proposed new well sites would disturb a total of about 2.8 acres of land.

columbia intends to use its existing 50-foot-wide right-of-way for removal of the existing pipelines and construction of the small diameter (less than 18-inch-diameter) replacement pipelines. All new pipelines would be constructed within a 50-foot-wide right-of-way. For the 20-inch-diameter replacement pipeline, Columbia proposes to use a 75-foot-wide construction right-of-way, of which 50 feet would be existing right-of-way and 25 feet would be new temporary right-of-way. All of the replacement pipelines would be built in about the same location as the existing pipelines. All other appurtenant facilities would be constructed within the right-of-way for the new and replacement pipelines. Construction of the pipelines would affect about 43.1 acres of land.

Extra temporary work space would be also required for staging areas for topsoil segregation; for road, wetland and stream crossings; equipment mobilization; and contractor and pipe storage yards. Columbia estimates that these extra work spaces would temporarily disturb about 7.1 acres of land.

Following construction, the new and replacement pipelines would be within a 50-foot-wide permanent right-of-way centered on the pipeline. All temporary construction right-of-way and extra workspaces would be restored and allowed to revert to their former use. About 7.5 acres of land would be required for the new permanent right-of-way.

Crawford Compressor Station

Construction of the additional facilities at the Crawford Compressor Station would take place entirely within the existing station fenceline.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Air quality.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Columbia. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

Crawford Storage Field

- The pipelines would cross three perennial waterbodies and eight non-forested wetlands.
- The pipelines may cross or be near historic structures and archeological sites.
- Two pipeline segments would cross a state scenic highway (State Route 374).
- Construction of one pipeline segment would take place within 50 feet of three residences.
- Some of the pipeline segments would possibly cross potential habitat for the Indiana bat, a federally listed endangered species.
- Increasing the capacity of the storage field may increase the potential for leakage.

Crawford Compressor Station

- Some of the additional facilities would be within a 100-year floodplain.
- The reboiler for the dehydration contactor would slightly increase the NO_X emission levels of the station.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

• Reference Docket Nos. CP95–61–000 and CP95–62–000.

• Send a copy of your letter to: Ms. Laura Turner, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street., N.E., Room 7312, Washington, D.C. 20426.

• Mail your comments so that they will be received in Washington, D.C. on or before April 3, 1995.

If you wish to receive a copy of the EA, you should request one from Ms. Turner at the above address.

Becoming and Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Laura Turner, EA Project Manager, at (202) 208–0916.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5111 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11325–001 Utah]

Cherry Creek Hydro Associates; Surrender of Preliminary Permit

February 24, 1995.

Take notice that Cherry Creek Hydro Associates, Permittee for the Cherry Creek Project No. 11325, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11325 was issued March 29, 1993, and would have expired February 28, 1996. The project would have been located on Cherry Creek, in Cache County, Utah.

The Permittee filed the request on February 15, 1995, and the preliminary permit for Project No. 11325 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5112 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–273–001]

Columbia Gas Transmission Corp.; Request for Waiver of Tariff Provision

February 24, 1995.

Take notice that on February 16, 1995, Columbia Gas Transmission Corporation (Columbia), pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, filed with the Commission a request to extend a previously granted waiver of the nine-month closeout period contained in Section 39 of the General Terms and Conditions of its FERC Gas Tariff from March 31, 1995, to and including resolution of an imbalance issue presently existing between Columbia and Tennessee Gas Pipeline Company (Tennessee). Columbia states that the requested extension is for nine months, or to December 31, 1995.

Columbia states that after several months of intensive efforts to reconcile imbalances, Columbia was unable to confirm those imbalances with several interconnecting pipelines and transportation customers, and, therefore, originally sought permission to extend the closeout period in Section 39 through March 31, 1995. On October 5, 1994, the Commission granted the requested extension.

Columbia states that since the Commission's October order, Columbia has worked to resolve its remaining historical imbalance dispute with third parties, but has been unable to resolve its imbalance with Tennessee. Columbia states that it is working diligently with Tennessee to resolve these issues, but cannot have them resolved by March 31, 1995.

Columbia states that in order to permit an orderly resolution of issues involving the termination of its Account No. 191, and collection of the remaining balance, Columbia requests that the Commission extend the nine-month closeout period from March 31, 1995, to December 31, 1995.

Any person desiring to be heard or to protest the said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 3, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant 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. 95–5101 Filed 3–1–95; 8:45 am]

BILLING CODE 6716–01–M

[Docket No. RP95–169–000]

KN Interstate Gas Transmission Co.; Notice of Filing

February 24, 1995.

On February 21, 1995, KN Interstate Gas Transmission Co. (KNI), filed pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c, § 154.63 of the Federal Energy Regulatory Commission's (''Commission'') Regulations, 18 CFR 154.63, and the Commission's Order on Remand issued on December 22, 1994 in Docket Nos. CP93–41–004 and CP93–42–004 for authorization to terminate its non-jurisdictional gathering and processing services which it provided prior to January 1, 1994—the date on which KNI transferred its non-jurisdictional gathering and processing facilities (except for the Bowdoin System) to KN Gas Gathering, Inc. (''KNGG''). KNI requests retroactive approval to January 1, 1994.

Any person desiring to be heard or to protest the said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 6, 1995. 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. 95–5102 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT95–7–000]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

February 24, 1995.

Take notice that on February 2, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet with a proposed effective date of March 5, 1995:

Third Revised Volume No. 1

Northwest states that the purpose of this filing is to comply with the directives of the Commission in 18 CFR § 250.16(b)(1), which requires an interstate natural gas pipeline to identify any marketing affiliates with which the pipeline has business relationships and to report changes, if any, which occur to the list of operating personnel and facilities shared by the interstate natural gas pipeline and its marketing or brokering affiliates.

Northwest states that a copy of the filing has been served upon Northwest's jurisdictional customers and upon relevant state regulatory commissions.

Any person desiring to be heard or to protest the said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 3, 1995. 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. 95–5103 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–6–012]

Paiute Pipeline Co.; Compliance Filing

February 24, 1995.

Take notice that on February 21, 1995, Paiute Pipeline Company (Paiute) tendered for filing the following tariff sheets to be part of its FERC Gas Tariff:

First Revised Volume No. 1–A

4th Sub Third Revised Sheet No. 10
Substitute Fourth Revised Sheet No. 10
Second Substitute Original Sheet No. 131

Second Revised Volume No. 1–A

Fourth Substitute Original Sheet No. 10
1st Rev 4th Sub Original Sheet No. 10
Substitute First Revised Sheet No. 10
First Revised Sheet No. 25
Original Sheet No. 25A
Original Sheet No. 25B
Fourth Substitute Original Sheet No. 161
Substitute First Revised Sheet No. 161
Second Revised Sheet No. 161

Paiute indicates that the purpose of its filing is to comply with the Commission's order issued January 18, 1995 in Docket No. RP93–6–011, by which the Commission approved an offer of settlement filed by Paiute. Paiute requests that the proposed tariff sheets be permitted to become effective consistent with the effective dates prescribed in the settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., 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 March 3, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5104 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–22–000]

Panhandle Eastern Pipe Line Co.; Refund Report

February 24, 1995.

Take notice that on February 21, 1995 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its Refund Report made pursuant to the Commission's order dated December 1, 1993 (December 1, 1993 Order) in the above dockets.

Panhandle states that on December 7, 1994 and February 14, 1995 Panhandle refunded to its jurisdictional customers their allocated share of the refunds of Kansas Ad Valorem taxes received from Panhandle's producer suppliers.

Panhandle further states that pursuant to Ordering Paragraph (F) of the December 1, 1993 Order Panhandle is submitting the following information:

(1) Appendix A—Summary of the Kansas Ad Valorem tax refund amounts due from the producer suppliers, amounts received and amounts which remain unpaid by producer suppliers.
(2) Appendix B—Workpapers supporting the refund made on December 7, 1994.
(3) Appendix C—Workpapers supporting the refund made on February 14, 1995.

Panhandle states that a copy of this information is being sent to each of Panhandle's affected customers and respective State Regulatory Commissions.

Any person desiring to be heard or to protest the said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 3, 1995. 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. 95–5105 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–216–000]

Panhandle Eastern Pipe Line Company, Trunkline Gas Co.; Application

February 24, 1995.

Take notice that on February 21, 1995, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251–1642, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642 (jointly referred to as Applicants), filed in Docket No. CP95–216–000 an abbreviated joint application pursuant to Section 7(b) of the Natural Gas Act, as amended, and §§ 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval

to abandon a natural gas transportation service between Applicants and ANR Pipeline Company (ANR) for ultimate use as storage gas for United Cities Gas Company (Cities), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they propose to abandon a transportation service initiated to implement a storage agreement for annual storage of up to 100,000 Mcf of natural gas by ANR for Cities. Applicants also state that the agreement is dated July 13, 1979, as amended, April 17, 1980. Applicants indicate that Panhandle provides its service under its Rate Schedule T–39, and Trunkline provides its service under its Rate Schedule T–61. Applicants further state that the service was authorized in Docket No. CP79–438. It is indicated that the agreement provides for delivery of gas at a rate of up to 500 Mcf per day to ANR during the 1980 and ensuing summer periods. Applicants aver that during the summer period Trunkline effects delivery to Panhandle by reducing existing deliveries of up to 500 Mcf per day of natural gas to Cities at an existing point of interconnection in Massac County, Illinois and the thermally equivalent volumes, not taken by Cities, are then delivered by Panhandle to ANR at an existing point of interconnection between Panhandle and ANR in Defiance County, Ohio, for storage. Applicants further indicate that during the winter period, Panhandle would receive daily volumes from ANR and Trunkline would make daily redeliveries of thermally equivalent volumes to Cities in Massac County, Illinois.

Applicants indicate that the agreement provides for a primary term of fifteen years with extensions provided for on a year-to-year basis until terminated by either party upon at least twelve months written notice. Applicants state that they and Cities have agreed to terminate the transportation service, effective April 1, 1995. Applicants further state that the interconnection with Cities will continue to be available for open access transportation service.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 17, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5106 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–218–000]

Texas Eastern Transmission Corp.; Petition for Declaratory Order

February 24, 1995.

Take notice that on February 22, 1995, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77252–1642, filed in Docket No. CP95–218–000 a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) requesting that the Commission confirm that Order No. 636 does not create a *per se* rule prohibiting interstate pipelines which have implemented Order No. 636 from entering into contracts for transportation or storage capacity on other interstate pipelines.

Texas Eastern submits that the Commission's preliminary determination in Texas Eastern Transmission Corporation, 69 FERC ¶ 61,132 (1994),[1] incorrectly created a *per se* rule that precludes a pipeline from holding pipeline capacity on other pipelines for economic (as distinguished from operational) reasons. Texas Eastern contends that such a *per se* rule against economically desirable transactions is contrary to the policy behind Order No. 636 and is in conflict with prior Commission decisions. It is asserted that, if not corrected, the position that interstate pipelines cannot contract for capacity on other interstate pipelines will undermine the Commission's efforts in Order No. 636 to create a flexible, competitively responsive natural gas industry. Texas Eastern states that the ultimate loser will be not just interstate pipelines, but consumers who need new facilities and services as well.

Texas Eastern asserts that, unless corrected, the preliminary order will foreclose the development of new services in most circumstances in which more than one pipeline is needed to perform a new service. It is stated that in the new, post-Order No. 636 environment, it is critically important that pipelines be allowed to hold capacity on upstream or downstream pipelines. To create new services for new markets, Texas Eastern contends that a pipeline must be able to acquire firm transportation capacity rights on other pipelines in areas where the pipeline does not have transportation facilities.

Texas Eastern contends that the Commission will still have its jurisdiction to review contracts between pipelines and may withhold approval where it finds them to be anti-competitive or otherwise contrary to the public interest. It is stated that the Commission should not, however, create a *per se* rule against pipelines holding capacity on upstream or downstream pipelines. Texas Eastern argues that where the contractual arrangement is not opposed by any party and is being used to provide new services demanded by the market, such arrangements should be permitted. Texas Eastern submits that the Commission should promptly issue a Declaratory Order finding that interstate pipelines that have implemented Order No. 636 may contract for transportation or storage capacity on other interstate pipelines.

Any person desiring to be heard or to make any protest with reference to said petition should on or before March 17, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a

[1] Texas Eastern states that the Request for Hearing of this decision has been rendered moot by a settlement filed by the parties in this proceeding on February 21, 1995.

protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5109 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–208–000]

Tennessee Gas Pipeline Co.; Notice of Request Under Blanket Authorization

February 24, 1995.

Take notice that on February 21, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–208–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to operate four existing delivery taps which were installed under the authorization of Section 311 of the Natural Gas Policy Act of 1978, under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the commission and open to public inspection.

Tennessee requests authorization to operate the delivery points for jurisdictional service as well as for the non-jurisdictional service for which they were installed. It is stated that the delivery points are located in Tuscarawas County, Ohio; Plaquemines Parish, Louisiana; Powell County, Kentucky; and Columbia County, New York. It is asserted that Tennessee would use the delivery points for the delivery of gas transported under its Part 284 blanket certificate. Tennessee states that operation of the delivery points is not prohibited by its existing tariff. It is explained that the proposed deliveries would have no impact on Tennessee's peak day or annual deliveries and that Tennessee has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5108 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–23–000]

Questar Pipeline Co.; Tariff Filing

February 24, 1995.

Take notice that on February 21, 1995, Questar Pipeline Company, tendered for filing and acceptance to be effective March 1, 1995, Second Revised Sheet No. 8 and First Revised Sheet No. 8A of First Revised Volume No. 1 of its FERC Gas Tariff.

Questar states that this filing updates its Index of Shippers by reflecting information regarding firm and no-notice transportation service agreements that were executed subsequent to Questar's August 1, 1994, filing in Docket No. RP94–331–000.

Questar states further that a copy of this filing has been served upon its jurisdictional customers as well as the Utah and Wyoming public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with this Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 3, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5107 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–28–000]

Williams Natural Gas Co.; Technical Conference

February 24, 1995.

In the Commission's order issued on November 30, 1994 in the above-captioned proceeding, the Commission ordered that a technical conference be convened to resolve issues raised by the filing. The conference to address the issues has been scheduled for March 21, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–5110 Filed 3–1–95; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Provo River Project Notice of Rate Order No. WAPA–65

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order—Provo River Project.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–65 placing into effect a formula for determining annual, power-related payments for the Provo River Project (PRP) of the Western Area Power Administration (Western) on an interim basis. The formula will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and makes it effective on a final basis or until it is replaced by another method.

Statement of Revenue and Related Expenses

The power-related revenue requirements for the Provo River Project (PRP) will be based upon projections contained in the annual power repayment study (PRS). Differences between estimated and actual costs will be adjusted when final financial data becomes available. The following table is based on the fiscal year (FY) 1994 preliminary PRS and provides a

summary of estimated revenue and cost data through the proposed 5-year approval period.

PROVO RIVER PROJECT—TOTAL 5-YEAR PROJECTIONS, REVENUES AND COSTS

[$1,000]

	Total FY 1995–99 projections
Total Revenues	1,341
Costs:	
O&M	959
Transmission	155
Interest	136
Investment Repayment	91
Total Costs	1,341

DATES: The formula will be effective on an interim basis beginning April 1, 1995, and remain in effect until FERC confirms, approves, and places it into effect on a final basis for a 5-year period, or until it is superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth G. Maxey, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493 or

Mr. Edmond Chang, Assistant Area Manager, for Power Marketing, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493 or

Ms. Deborah M. Linke, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–0098, (303) 275–1618 or

Mr. Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001, (202) 586–5581

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 58716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

This action is established pursuant to Section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. § 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) were transferred to and vested in the Secretary of Energy (Secretary) under the Reclamation Act of 1902, 43 U.S.C. § 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c), and other acts specifically applicable to the project system involved.

Rate Order No. WAPA–65, confirming, approving, and placing the proposed formula for determining annual, power-related payments for the Provo River Project into effect on an interim basis, is issued and will be submitted promptly to FERC for confirmation and approval on a final basis.

Issued in Washington, DC, February 16, 1995.

Bill White,

Deputy Secretary.

Deputy Secretary

Order Confirming, Approving, and Placing into Effect on an Interim Basis, a Formula for Determining Annual, Power-Related Payments for the Provo River Project

February 16, 1995.

In the matter of: Western Area Power Administration Provo River Project Power Rate, Rate Order No. WAPA–65.

The formula is established pursuant to Section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. § 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) were transferred to and vested in the Secretary of Energy (Secretary) under the Reclamation Act of 1902, 43 U.S.C. § 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c), and other acts specifically applicable to the project system involved.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of DOE; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms an definitions apply:

Contractors: ICPA and UMPA.
CRSP: Colorado River Storage Project.
DCP: Deer Creek Powerplant.
DOE: Department of Energy.
DOE Order RA 6120.2: A Department of Energy order dealing with power marketing administration financial reporting.
FERC: Federal Energy Regulatory Commission.
FRN: **Federal Register** notice.
FY: Fiscal year, beginning October 1.
ICPA: Intermountain Consumer Power Association.
Interior: U.S. Department of the Interior.
kW: Kilowatt.
kW/month: The greater of (1) the highest 30-minute demand measured during the month, not to exceed the contract obligation, or (2) the contract rate of delivery.
kWh: Kilowatthour.
M&I: Municipal and industrial.
mills/kWh: Mills per kilowatthour.
MWh: Megawatthour.
NEPA: National Environmental Policy Act of 1969.
OM&R: Operation, maintenance, and replacement.
PMA: Power marketing administration.
PRP: Provo River Project.
PRP–MP: Provo River Project—Marketing Plan.
PRS: Power repayment study.
PRWUA: Provo River Water Users Association.
Reclamation: Bureau of Reclamation, U.S. Department of the Interior.
SLCA: Salt Lake City Area.
SLCAO: Salt Lake City Area Office.
Treasury: U.S. Department of the Treasury.
UMPA: Utah Municipal Power Agency.
UP&L: Utah Power & Light Company.
Western: Western Area Power Administration, U.S. Department of Energy.

Effective Date

The revenue recovery formula will become effective on an interim basis

beginning April 1, 1995, and remain in effect pending FERC's approval on a final basis for a 5-year period, or until superseded.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in developing the method of determining annual power-related payments.

The following summarizes the steps Western took to ensure involvement of interested parties in determining annual power-related payments:

1. A **Federal Register** notice was published on July 12, 1994 (59 FR 35513), officially announcing the proposed formula, initiating the public consultation and comment period, and presenting procedures for public participation.

2. On July 15, 1994, a letter was mailed from Western's SLCAO to customers and other interested parties announcing the publication of the **Federal Register** notice of July 12, 1994.

3. The consultation and comment period ended August 11, 1994.

Project History

The PRP is located on the Provo River in central Utah. Deer Creek Reservoir is backed-up behind Deer Creek Dam. Construction of the PRP began in May 1938, with the powerplant completed in 1958. It has a present generating capacity of 5 megawatts. The PRP initially was designed to supply M&I and irrigation water to users in the Salt Lake and Utah valleys. It does this by capturing the flow of the Provo River and also by storing water diverted from the Duschesne and Weber Rivers. UP&L has a powerplant on the Weber which has its production reduced with the diversion of water to the Deer Creek Reservoir. As compensation, the PRP furnishes UP&L energy to replace that which it is estimated it would have generated absent the construction of the PRP. This arrangement was formalized in contract No. Ilr–1082, dated December 20, 1938.

The irrigation water consumers for the PRP are organized into the PRWUA, a corporation of stockholders owning prorated Provo River water entitlements. They executed contract No. Ilr–874 in 1936 with the Federal Government to construct and repay irrigation-related project facilities.

Only Deer Creek energy in excess of that obligated to UP&L has been available for Federal marketing. Since 1963, CRSP has purchased the available PRP energy at rates designed to recover the PRP's power-related OM&R and investment costs. Since 1986, the PRP rate has also included a commitment to supply $1.623 million toward the PRWUA's repayment obligation for costs allocated to irrigation. The PRP's original power-related investment was repaid in FY 1986.

Power Repayment Studies

PRSs are typically prepared each FY to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to be repaid by the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order RA 6120.2, section 12b, requires that:

> In addition to the recovery of the above costs (operation and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover (1) each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus, (2) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (3) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs.

The PRP PRSs have been used to determine the annual PRP rate, which includes OM&R, wheeling and interest expenses. The contractors' annual irrigation assistance payments to the PRWUA will not be included in the PRS but will instead be paid under a separate agreement among Reclamation, Western, PRWUA, and the contractors.

Certification of Rate

Western's Administrator has certified that the PRP formula for determining annual, power-related payments placed into effect on an interim basis herein will result in the lowest possible cost to consumers, consistent with sound business principles. The formula has been developed in accordance with administrative policies and applicable laws.

Discussion

Each year, the contractors will pay the PRP's total estimated annual power-related costs in return for the total marketable energy produced at the PRP. The energy produced at the PRP has been allocated to the contractors proportional to their PRP entitlement. Western will prepare an annual PRS which will identify the anticipated power-related costs for the next FY. Budgeted minor replacements and additions will be included in the annual expenses. If replacements or additions exceeding $5,000.00, but no greater than $25,000.00 are needed, the contractors will be given the option of financing their share of the cost, proportional to their PRP entitlement, in advance, or of having the cost capitalized at DOE's current interest rate (the year in which funds are first expended) and amortized over the estimated, average life of the replacement, or 50 years, whichever is less. Additions will be amortized over 50 years. Each contractor will pay its share of the annual costs identified in the PRS in 12 equal monthly installments.

This method of determining annual power-related revenue requirements will satisfy the cost-recovery criteria set forth in DOE Order RA 6120.2.

Statement of Revenue and Related Expenses

The revenue requirements for the PRP are based upon PRS estimates of future annual costs. Each FY's annual estimated costs will be adjusted when historical financial data becomes available. The following table provides a summary of estimated revenue and cost data through the proposed 5-year approval period.

PROVO RIVER PROJECT TOTAL—5-YEAR PROJECTIONS REVENUES AND COSTS

[$1,000]

	Total FY 1995–99 projections
Total Revenues	1,341
Costs:	
O&M	959
Transmission	155
Interest	136
Investment Repayment	91
Total Costs	1,341

Basis for Rate Methodology—Provo River Project

The contractors will be billed each FY, payable in 12 equal monthly payments. The monthly payments will be due and payable regardless of the amount of power the contractors receive from the PRP. During the first year this procedure is in effect, the annual sum due for FY 1995 will be divided by the months remaining in FY 1995. The contractors will be billed in equal monthly installments for the remaining months in FY 1995. Beginning in FY 1996, the proposed 12 equal monthly installments will take effect. Each FY, Western will project PRP expenses by

preparing a PRS which will include budgeted OM&R and repayment costs for the PRP. The revenue requirement shown in this PRS will not be dependent upon the power and energy made available for sale, or the rate of generation each year. The amount of each monthly payment for the following FY shall be established in advance by Western and submitted to each contractor on or before August 31 of the year preceding the appropriate FY.

The preparation of each FYs PRS shall include adjustment to the figures used in the previous year's PRS to incorporate final financial and operational data for the prior FY. Any adjustments required, whether resulting in an increase or decrease of the annual sum due, will be added to the FY then being calculated, and divided over 12 equal monthly installments.

Minor replacements and additions will be included in annual OM&R expenses. If replacements and/or additions exceeding $5,000.00, but no greater than $25,000.00, in cost are needed, the contractors will be given the option of financing the cost through their own non-Federal sources or having the cost financed by the Federal Government and amortized and paid over the lesser of the average life of the replacement or 50 years, whichever is less. Additions will be amortized over 50 years. If financed with Federal funds, the cost will be capitalized at the then-current interest rate prescribed by DOE, pursuant to RA 6120.2 11B, ''Basic Policy for Rate Adjustments; Interest Rate Formula,'' in the FY in which funds are first expended for the replacement or addition.

If replacements over $25,000.00 are needed, the contractors will consult with Reclamation, the PRWUA, and Western about financing the replacement.

The proposed formula constitutes a minor rate adjustment as defined by the procedures for public participation in general rate adjustments covered in 10 CFR 903.2(f). The PRP's annual sales are less than 100 million kWh and installed capacity is less than 20,000 kW.

Comments

During the 30-day comment period, Western received no written comments either requesting information or commenting on the formula. Comments were received in response to the revised, PRP–MP **Federal Register** notice dated July 11, 1994 (59 FR 35334). Comments were accepted on Western's revised PRP–MP proposal until August 10, 1994. These comments were addressed in the PRP–MP **Federal Register** notice dated November 21, 1994 (59 FR 60007).

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.;* Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Availability of Information

Information regarding this rate order, including PRSs, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the revenue-recovery methodology, is available for public review at the following offices:

Western Area Power Administration, Salt Lake City Area Office, Office of the Assistant Area Manager for Power Marketing, 257 East 200 South, Suite 475, Salt Lake City, UT 84111

Western Area Power Administration, Division of Marketing and Rates, 1627 Cole Boulevard, Golden, CO 80401

Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585

Submission to Federal Energy Regulatory Commission

The formula for determining annual, power-related payments herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective April 1, 1995, the method of cost recovery for the Provo River Project. The procedure shall remain in effect on an interim basis, pending Federal Energy Regulatory Commission confirmation and approval of it or a substitute process on a final basis, through March 31, 2000.

Issued in Washington, DC, February 16, 1995.

Bill White,

Deputy Secretary.

[FR Doc. 95–4880 Filed 3–1–95; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1039–DR]

Alaska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–1039–DR), dated September 13, 1994, and related determinations.

EFFECTIVE DATE: February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 16, 1995, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Alaska, resulting from severe storms and flooding on August 8, 1994 through September 15, 1994, is of sufficient severity and magnitude that special cost-sharing conditions are warranted under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act'') for the Pubic Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance to be provided at 85 percent of the eligible costs.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of Alaska and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 95–5156 Filed 3–1–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1044–DR]

Amendment to Notice of a Major Disaster Declarations; CA

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California, (FEMA–1044–DR), dated January 10, 1995, and related determinations.

EFFECTIVE DATE: February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California dated January 10, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 10, 1995:

The counties of El Dorado, Madera, and Solano for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–5155 Filed 3–1–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

MSL Express Inc., 160–19 Rockaway Boulevard C, Jamaica, NY 11434, Officers: Chester Tong, President, Lily Tong, Vice President

New K.S.A.I. Inc., 9009 La Cienega Boulevard, Inglewood, CA 90301, Officers: Kunihiro Iwahashi, President, Satoshi Hattori, Treasurer

Dated: February 27, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–5124 Filed 3–1–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Eastside Holding Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 27, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Eastside Holding Corporation, Snellville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Eastside Bank & Trust Company, Snellville, Georgia.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Guaranty Development Company, Livingston, Montana; to acquire 100 percent of the voting shares of American Bank (Whitefish), Whitefish, Montana.

Board of Governors of the Federal Reserve System, February 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5118 Filed 3–1–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94E–0360]

Determination of Regulatory Review Period for Purposes of Patent Extension; Albunex®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Albunex® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The

approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Albunex®. Albunex® is indicated as an aid for ultrasound contrast enhancement of ventricular chambers and improvement of endocardial border definition in patients with suboptimal echoes undergoing ventricular function and regional wall motion studies. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Albunex® (U.S. Patent No. 4,844,882) from Molecular Biosystems, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 19, 1994, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Albunex® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Albunex® is 2,397 days. Of this time, 975 days occurred during the testing phase of the regulatory review period, while 1,422 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: January 14, 1988. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(g)) for human tests to begin became effective on August 18, 1987. However, FDA records indicate that IDE was conditionally approved on January 14, 1988, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e)*: September 14, 1990. The applicant claims September 11, 1990, as the date the premarket approval application (PMA) for Albunex® (PMA P900059) was initially submitted. However, FDA records indicate that PMA P900059 was submitted on September 14, 1990.

3. *The date the application was approved*: August 5, 1994. FDA has verified the applicant's claim that PMA P900059 was approved on August 5, 1994.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 763 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 1, 1995, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 29, 1995, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 24, 1995.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 95–5183 Filed 3–1–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

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 Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: March 2, 1995.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 309, Telephone Conference.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 5333 Westbard Ave., Room 309, Bethesda, MD 20892, (301) 594–7269.

Name of SEP: Behavioral and Neurosciences.

Date: March 20, 1995.

Time: 1:30 p.m.

Place: NIH, Westwood Building, Room 303, Telephone Conference.

Contact Person: Dr. Teresa Levitin, Scientific Review Administrator, 5333 Westbard Ave., Room 303, Bethesda, MD 20892, (301) 594–7141.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 20, 1995.

Time: 12:00 noon.

Place: NIH, Westwood Building, Room 226, Telephone Conference.

Contact Person: Dr. Gerald Liddel, Scientific Review Admin., 5333 Westbard Ave., Room 226, Bethesda, MD 20892, (301) 594–7167.

Name of SEP: Biological and Physiological Sciences.

Date: March 23, 1995.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 233A, Telephone Conference.

Contact Person: Dr. Robert Su, Scientific Review Administrator, 5333 Westbard Ave., Room 233A, Bethesda, MD 20892, (301) 594–7320.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 31, 1995.

Time: 10:00 a.m.

Place: NIH, Westwood Building, Room 226, Telephone Conference.

Contact Person: Dr. Gerald Liddel, Scientific Review Admin., 5333 Westbard Ave., Room 226, Bethesda, MD 20892, (301) 594–7167.

The meetings will be closed in accordance with the provisions set forth in secs. 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: February 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–5230 Filed 3–1–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3736; FR–3624–N–03]

Announcement of Funding Awards for the Traditional Indian Housing Development Program Fiscal Year 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 document notifies the public of funding awards for Fiscal Year 1994 Indian Housing Authorities applicants under the Traditional Indian 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: Bruce Knott, Director, Housing Development Division, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 755–0068. The TDD number for hearing impaired is (202) 708–0850. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Traditional Indian Housing Development program is authorized by sections 5 and 6 of the U.S. Housing Act of 1937 (42 U.S.C. 1437c, 1437d); as amended; U.S. Department of Housing and Urban Development and Independent Agencies' Appropriations Act for Fiscal Year 1994, Section 23, U.S. Housing Act of 1937, as added by sec. 554, Cranston Gonzalez National Affordable Housing Act; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

The purpose of the competition was to make funding available for the development of new Indian housing units and to replace units approved for demolition/disposition. These Indian Housing Development grants will enable Indian Housing authorities to assist in the development and operation of low-income housing projects in Indian areas. Recipients were chosen in a competition under selection criteria announced a Notice of Funding Availability (NOFA) published in the **Federal Register** on April 20, 1994 (59 FR 18846).

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 and addresses of the recipients which received funding under this NOFA, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: February 27, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS

Funding recipient (Name and address)	Amount approved
Program name: New Indian Housing Development Statute: U.S. Housing Act of 1937; as added by the Indian Housing Act of 1988	
Metlakatla HA, P.O. Box 59, Metlakatla, AK 99926	$2,258,704
Metlakatla HA, P.O. Box 59, Metlakatla, AK 99926	3,060,695
Tlingit-Haida Reg HA, Route 1 Box 376, Ketchikan, AK 99901	2,663,667
ASRC HA, Box 677, Barrow, AK 99723	3,482,243
ASRC HA, Box 677, Barrow, AK 99723	3,262,943
Northwest Inupiat HA, P.O. Box 29, Kiana, AK 99749	3,753,000
Interior Reg HA, General Delivery, Ft Yukon, AK 99740	1,867,642
Interior Reg HA, General Delivery, Ft Yukon, AK 99740	1,307,355
Interior Reg HA, General Delivery, Ft Yukon, AK 99740	933,826
Bering Straits Reg HA, P.O. Box 995, Nome, AK 99762	3,264,438
Bering Straits Reg HA, P.O. Box 995, Nome, AK 99762	3,264,438
Bering Straits Reg HA, P.O. Box 995, Nome, AK 99762	3,264,438
Bering Straits Reg HA, P.O. Box 995, Nome, AK 99762	3,264,438
AVCP Reg HA, General Delivery, Kipnuk, AK 99557	3,756,264
Bristol Bay HA, P.O. Box 750, Dillingham, AK 99576	697,133
Bristol Bay HA, P.O. Box 750, Dillingham, AK 99576	1,568,549
Bristol Bay HA, P.O. Box 750, Dillingham, AK 99576	697,133
North Pacific Rim HA, P.O. Box 171, Tatitlek, AK 99677	2,136,645
North Pacific Rim HA, P.O. Box 171, Tatitlek, AK 99677	879,795
Aleutian HA, General Delivery, St. Paul, AK 99660	572,019
Baranof Island HA, P.O. Box 517, Sitka, AK 99835	2,849,637
MOWA Band of Choctaw Indians, Route 1, Box 1080, Mt. Vernon, AL 36560	720,848
MOWA Band of Choctaw Indians, Route 1, Box 1080, Mt. Vernon, AL 36560	1,123,060
Navajo Housing Authority, P.O. Box 387, Window Rock, AZ 86515	1,132,143
Navajo Housing Authority, P.O. Box 387, Window Rock, AZ 86515	2,875,417
Navajo Housing Authority, P.O. Box 387, Window Rock, AZ 86515	10,286,309
Navajo Housing Authority, P.O. Box 387, Window Rock, AZ 86515	5,221,645
Navajo Housing Authority, P.O. Box 387, Window Rock, AZ 86515	8,193,320
Cocopah Housing Authority, P.O. Box AF, Somerton, AZ 85350	3,557,408
Kaibab Paiute Housing Authority, HC 65, Box 122, Fredonia, AZ 86022	1,664,576
Quechan Tribal Housing Authority, 1860 W. Sapphire Lane, Winterhaven, CA 92283	2,924,710
Modoc-Lassen Indian Housing Authority, P.O. Box 2028, Susanville, CA 96130	1,540,331
Modoc-Lassen Indian Housing Authority, P.O. Box 2028, Susanville, CA 96130	1,499,135

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

Funding recipient (Name and address)	Amount approved
Central Cal Indian Housing Authority, 5108 E. Clinton Way, Suite 108, Fresno, CA 93727	3,005,574
Central Cal Indian Housing Authority, 5108 E. Clinton Way, Suite 108, Fresno, CA 93727	1,194,855
Northern Circle Indian Housing Authority, 694 Pinoleville Drive, Ukiah, CA 95482	3,016,410
Northern Circle Indian Housing Authority, 694 Pinoleville Drive, Ukiah, CA 95482	2,206,445
Mesa Grande Housing Authority, 4040 30th St., Suite 204, San Diego, CA 92104	2,143,580
Campo Housing Authority, Post Office Box 66, Campo, CA 91906	1,229,224
Campo Housing Authority, Post Office Box 66, Campo, CA 91906	2,546,449
Southern Ute, P.O. Box 561, Ignacio, CO 81137	1,939,703
Coushatta Tribe, P.O. Box 818, Elton, LA 70532	1,782,260
Wampanoag Tribe of Gay Head (Aquinnah), 20 Black Brook Road, Gay Head, MA 02535–9701	1,109,198
Wampanoag Tribe of Gay Head (Aquinnah), 20 Black Brook Road, Gay Head, MA 02535–9701	1,370,780
Pleasant Point Passamaquoddy Reservation, Housing Authority, P.O. Box 339, Perry, ME 04667	1,356,592
Houlton Band of Maliseet Indians, RR 3 Box 450, Houlton, ME 04730–9514	1,319,293
Bay Mills Housing Authority, Route 1, Box 3345, Brimley, MI 49715–	1,379,180
Sault Ste. Marie Tribal Housing Authority, 2218 Shunk Road, Sault Ste. Marie, MI 49783	1,095,000
Grand Traverse Band of Ottawa and Chippewa Indians, Governmental Operations Center, Suttons Bay, MI 49682	1,280,860
Grand Traverse Band of Ottawa and Chippewa Indians, Governmental Operations Center, Suttons Bay, MI 49682	1,377,880
Leech Lake Reservation Housing Authority, Route 3, Box 100, Cass Lake, MN 56633	1,527,300
Leech Lake Reservation Housing Authority, Route 3, Box 100, Cass Lake, MN 56633	1,685,724
Fond du Lac Lake Superior Band of Chippewa, Tribal Office, Cloquet, MN 55720	952,710
Red Lake Reservation Housing Authority, P.O. Box 219 Highway 1 East, Red Lake, MN 56671	1,664,938
Bois Forte Housing Authority, P.O. Box 12, Nett Lake, MN 55772	847,000
Mississippi Band of Choctaw Indians, P.O. Box 6010 Choctaw Branch, Philadelphia, MS 39350	1,217,950
Qualla Housing Authority, Acquoni Road P.O. Box 1749, Cherokee, NC 28719–1749	1,039,020
Qualla Housing Authority, Acquoni Road P.O. Box 1749, Cherokee, NC 28719–1749	1,069,568
Turtle Mountain, P.O. Box 620, Belcourt, ND 58316	462,285
Northern Ponca, 3341 Pioneer Blvd, Lincoln, NE 68516	1,868,047
Northern Ponca, 3341 Pioneer Blvd, Lincoln, NE 68516	2,024,072
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	3,657,747
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	3,832,326
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	1,399,495
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	5,782,487
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	690,007
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	3,216,278
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	1,674,828
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	108,409
All Indian Pueblo Housing Authority, P.O. Box 35040 Station D, Albuquerque, NM 87176	3,233,145
Te-Moak Western Shoshone Housing Authority, 504 Sunset St., Elko, NV 89801	3,654,080
Seneca Nation Housing Authority, 50 Iroquois Drive, Irving, NY 14081	1,672,325
Akwesasne Indian Housing Authority, Route 37 P.O. Box 540, Hogansburg, NY 13655	1,391,280
Akwesasne Indian Housing Authority, Route 37 P.O. Box 540, Hogansburg, NY 13655	1,064,840
Cherokee Nation, P.O. Box 1007, Tahlequah, OK 74464	15,762,880
Choctaw Nation, P.O. Box G, Hugo, OK 74743	1,727,490
Creek Nation, P.O. Box 297, Okmulgee, OK 74447	1,727,491
Comanche Tribe, P.O. Box 908, Lawton, OK 73502	2,971,777
Comanche Tribe, P.O. Box 908, Lawton, OK 73502	4,161,542
Comanche Tribe, P.O. Box 908, Lawton, OK 73502	2,971,777
Apache Tribe HA, P.O. Box 1172, Anadarko, OK 73005	1,485,794
Delaware Tribe IHA, P.O. Box 334, Chelsea, OK 74016	1,504,688
Delaware Tribe IHA, P.O. Box 334, Chelsea, OK 74016	1,607,696
Wichita Tribes IHA, P.O. Box 729, Anadarko, OK 73005	1,485,500
Coquille Indian Housing Authority, P.O. Box 1435, Coos Bay, OR 97420	4,178,758
Coquille Indian Housing Authority, P.O. Box 1435, Coos Bay, OR 97420	3,640,549
Catawba Indian Nation, P.O. Box 11106, Rock Hill, SC 29730	2,077,305
Catawba Indian Nation, P.O. Box 11106, Rock Hill, SC 29730	2,133,626
Oglala Sioux, P.O. Box 111, Wounded Knee, SD 57794	2,935,242
Oglala Sioux, P.O. Box 111, Wounded Knee, SD 57794	2,279,940
Rosebud, P.O. Box 69, Rosebud, SD 57570	2,953,230
Crow Creek, P.O. Box 2, Harrold, SD 57536	1,061,610
Crow Creek, P.O. Box 2, Harrold, SD 57536	1,061,610
Standing Rock, P.O. Box 196, McLaughlin, SD 57642	4,442,427
Standing Rock, P.O. Box 196, McLaughlin, SD 57642	4,229,301
Standing Rock, P.O. Box 196, McLaughlin, SD 57642	2,535,960
Yankton Sioux, General Delivery, Marty, SD 57361	1,987,820
Yankton Sioux, General Delivery, Marty, SD 57361	93,145
Sisseton-Wahpeton, RR, Peever, SD 57257	3,157,458
Spokane Indian, P.O. Box 195, Wellpinit, WA 99040	2,118,704
Spokane Indian, P.O. Box 195, Wellpinit, WA 99040	1,541,392
Spokane Indian, P.O. Box 195, Wellpinit, WA 99040	2,235,720
Muckleshoot, 38037–158th Ave SE, Auburn, WA 98002	4,403,160
Muckleshoot, 38037–158th Ave SE, Auburn, WA 98002	2,632,800

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

Funding recipient (Name and address)	Amount approved
Colville Tribe, P.O. Box 150, Nespelem, WA 99155	1,605,552
Lac du Flambeau Chippewa Housing Authority, P.O. Box 187, Lac du Flambeau, WI 54538–0187	1,342,838
Lac du Flambeau Chippewa Housing Authority, P.O. Box 187, Lac du Flambeau, WI 54538–0187	1,177,735
Oneida Housing Authority, P.O. Box 68, Oneida, WI 54155	1,674,340
Red Cliff Band of Lake Superior Chippewa, Tribal Office, Bayfield, WI 54814	1,330,760
Mohican Housing Authority, N8618 Oak Street, Bowler, WI 54416	1,359,588
Mohican Housing Authority, N8618 Oak Street, Bowler, WI 54416	808,640
Sokaogon Chippewa Housing Authority, P.O. Box 186, Crandon, WI 54520	1,632,072
Lac Courte Oreilles Housing Authority, Route 2, Hayward, WI 54843	1,391,240

[FR Doc. 95–5168 Filed 3–1–95; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Opportunity for Review and Comment on Draft Recovery Plan for the Spectacled Eider is Extended

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the extension of a public review and comment period on a draft recovery plan for spectacled eiders (*Somateria fischeri*). The species occurs in arctic and sub-arctic regions of western and northern Alaska and along the arctic coast of Russia. The Service is proposing emphasis on recovery actions in these geographic areas. The original Notice of Availability for review and comment was published on October 25, 1994. The 120-day comment period was scheduled to close on February 23, 1995. Via this notice, the comment period is extended until March 17, 1995. All comments received during the entire period, October 25, 1994, through March 17, 1995, will be considered prior to finalization of the recovery plan.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Teresa Woods at U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska, 99503–6199 and 907/786–3505. Written comments and materials regarding the plan should be addressed to Teresa Woods at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Teresa Woods at the above address and telephone number.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 23, 1995.

David B. Allen,

Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 95–5157 Filed 3–1–95; 8:45 am]
BILLING CODE 4310–55–P

Aquatic Nuisance Species Task Force Ruffe Control Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Ruffe Control Committee will meet to review comments received on the Ruffe Control Program and to make final revisions before transmitting the Program to the Aquatic Nuisance Species Task Force for final approval. The meeting is open to the public. Interested persons may make oral statements to the Committee or may file written statements for consideration.

DATES: The Ruffe Control Committee will meet from 8:30 a.m. to 5:00 p.m. on Tuesday, April 11, 1995, and 8:00 a.m. to 12:00 p.m. on Wednesday, April 12, 1995.

ADDRESSES: The Ruffe Control Committee will meet at the Marquette Biological Station, 1924 Industrial Parkway, Marquette, Michigan 49855.

CONTACT PERSON FOR MORE INFORMATION: Tom Busiahn, Ruffe Control Committee Chair, at (715) 682–6185.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Ruffe Control Committee, a committee of the Aquatic Nuisance Species Task Force established by section 1201 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701). Minutes of meeting will be maintained by Coordinator, Aquatic Nuisance Species Task Force, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203, and the Chair, Ruffe Control Committee, U.S. Fish and Wildlife Service, Fishery Resources Office, 2800 Lake Shore Drive East, Ashland, Wisconsin 54806, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: February 27, 1995.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 95–5180 Filed 3–1–95; 8:45 am]
BILLING CODE 4310–55–M

Bureau of Land Management

[CO–920–95–1320–01; COC 57803]

Application, Colowyo Coal Company L.P., Colorado Invitation for Coal Exploration License

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Colowyo Coal Company L.P. in a program for the exploration of unleased coal deposits owned by the Untied States of America in the following described lands located in Moffat and Rio Blanco, Counties, Colorado:

T. 3 N., R. 93 W., 6th P.M.
Sec. 2 lots 3, and 4;
Sec. 3, lots 1 to 4, inclusive;
Sec. 4, lot 4, SW¼NW¼, and NW¼SW¼;
Sec. 6, lot 7;
Tract 41, lots 6 to 9, inclusive;
Sec. 7, lots 1 to 5, inclusive, lot 10 NW¼NE¼, and E½NW¼;
Tract 41, lots 5, and 6;
Sec. 18, lots 1, 2, and E½NW¼.
T. 3 N., R. 94 W., 6th P.M.
Sec. 1, lots 5 to 8, inclusive, S½N½, S½;
Sec. 2, lots 5 to 8, inclusive, S½N½, S½;
Sec. 3, lots 5 to 8, inclusive, S½N½, S½;

Sec. 4, lots 5 to 8, inclusive, S½N½, S½;
Sec. 5, lots 5, 6, S½NE¼, E½SW¼, and SE¼;
Sec. 8, S½, NE¼, and E½NW¼;
Sec. 9, all;
Sec. 10, all;
Sec. 11 all;
Tract 41, lots 2, and 4;
Sec. 12, lots 1, 3, N½, SW¼, and WH½SE;
Tract 41, lots 1, and 4;
Sec. 13, lots 2, 3, W½NE¼, NW¼, and NW¼SW¼;
Sec. 14, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 15, all
Sec. 17, all
Sec. 20, N½;
Sec. 21, N½, and N½S½;
Sec. 22, NW¼, and NE¼NE¼;
Sec. 23, N½NW¼.
T. 4 N, R. 93 W., 6th P.M.
Sec. 27, SW¼
Sec. 28, Lots 6, 8, E½SE¼, and SW¼SE¼;
Sec. 33, lots 2, 3, E½, SE¼NW¼, E½SW¼, and SW¼SW¼.
Sec. 34, all;
Sec. 35, lots 17, 19, NW¼, and W½SW¼.
T. 4 N., R. 94 W., 6th P.M.
Sec. 22, lot 26, and S½SE¼;
Sec. 23, S½S½;
Tract 44, lots 2, and 4;
Sec. 26, lots 1, 3, N½, SW¼, and W½SE¼;
Sec. 27, E½, SW¼, S½NW¼, and NE¼NW¼;
Sec. 33, lot 1, E½, SW¼, E½NW¼, SW¼NW¼;
Sec. 34, all.

The area described contains approximately 14,967.54 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC 57803 at the Bureau of Land Management (BLM), Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them within 30 days after publication of the Notice of Invitation in the **Federal Register**:

Karen Purvis, Solid Minerals Team, Resource Services, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215

and

Ed Moyer, Colowyo Coal Company L.P., 5731 State Highway 13, Meeker, Colorado 81641.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate.

Dated: February 24, 1995.

Karen Purvis,

Solid Minerals Team, Resource Services.

[FR Doc. 95–5123 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–JB–M

[UTU–65356]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–65356 for lands in Uintah County, Utah, was timely filed and required rentals accruing from October 1, 1994, the date of termination, have been paid.

The lessees have agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16–⅔ percent, respectively. The $500 administrative fee has been paid and the lessees have reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–65356, effective October 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Minerals Adjudication Section.

[FR Doc. 95–5088 Filed 3–01–95; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–930–5410–00–B057; CACA 31188]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private land described in this notice, aggregating 319.84 acres, is segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine its suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination. The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, California State Office, Federal Office Building, 2800 Cottage Way, Room E–2845, Sacramento, California 95825, (916) 979–2858. Serial No. CACA 31188.

T. 14 S., R. 5 E., Mount Diablo Meridian

Sec. 25, Lot 5;
Sec. 26, Lots 3, 4, and 8;
Sec. 27, Lots 1, 2, and 4, NE¼NW¼.
County—San Benito.

Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interest; or two years from the date of publication of this notice, whichever occurs first.

Dated; February 22, 1995.

David McIlnay

Chief, Branch of Lands

[FR Doc. 95–5145 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–40–P

[CO–050–1220–00]

Recreation Management; Camping Fees and Supplementary Rules; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of campground fees and establishment of supplementary rules.

SUMMARY: The Canon City District hereby gives notice that campground fees will be charged at the new Sand Gulch and The Bank Campgrounds within the Shelf Road Climbing Area, in accordance with 36 CFR 71. The campgrounds are located about 12 miles north of Canon City, Colorado, along Fremont County Road 9. This action is necessary to implement USDI and BLM policies for the collection of user fees for recreational services. Daily recreation use fees at both campgrounds are established at the rate of $4.00 per

campsite. Each campground also has one group campsite with a daily fee of $8.00.

Further, in addition to the regulations in 43 CFR 8365, the following supplementary rules are established for Sand Gulch and The Bank Campgrounds:

1. Camping. Camping is permitted only in designated sites. No reservations can be made, all sites are available on a first come-first serve basis.

2. Number of vehicles and persons per site. Individual campsites are limited to no more than 2 vehicles and 8 people.

The group sites are limited to 4 vehicles and 20 people.

3. Campfires. Campfires are permitted only in fire rings provided for such purpose by BLM.

4. Trash. No trash facilities are available in these campgrounds, all trash must be taken out.

5. Firearms. No person shall shoot or discharge any weapon within ¼ mile of these developed campgrounds.

6. Motorized Vehicles. Traveling or parking off existing roads and parking areas is prohibited.

7. Noise. Quite hours, in which the use of generators, loud radios, or boisterous behavior is prohibited, are in effect between 10:00 p.m. and 6:00 a.m.

8. Firewood. The gathering of live vegetation, standing dead vegetation, or dead and down wood within the campgrounds is prohibited. Firewood gathering is allowed outside the campgrounds but is restricted to only dead and down wood.

9. Camping Length of Stay. Persons may camp or occupy a site or sites in either campground for a period of not more than 14 days within any period of 28 consecutive days. The 28 day period begins when a person or equipment initially occupies a specific campsite. The 14 day limit may be reached either through a number of separate visits or through 14 days of continuous occupation during the 28 day period. After the 14th day of occupation, persons may not relocate within a 25 mile radius of the previously used location(s) for a minimum of 14 days.

10. Pets. No person shall, unless authorized by BLM, bring any animal into the campgrounds unless such animal is on a leash not longer than six feet and secured to a fixed object or under control of a person, or is otherwise physically restricted at all times.

11. Unattended Personal Property. No person shall leave personal property unattended in these campgrounds for a period of more than 24 hours.

12. Fireworks. The discharge or ignition of firecrackers, rockets or other fireworks is prohibited.

13. Natural and Cultural Features. Defacing, disturbing or removing any natural or cultural (historic and prehistoric) features is prohibited.

14. Developed Facilities. Defacing, disturbing or removing any developed facilities is prohibited.

15. Interference. Threatening, resisting, intimidating, or interfering with any BLM official, employee, or volunteer engaged in, or on account of, the performance of their duties is prohibited. Threatening, intimidating or interfering with lawful users of these campgrounds is prohibited.

16. Trapping. Trapping is prohibited except for health and public safety or administrative purposes as determined by BLM.

17. Underage drinking. Consumption and/or possession of alcoholic beverages, as defined by state law, by persons under 21 years of age is prohibited.

18. Overflow camping areas. Areas are identified for overflow camping and may only be used when the campgrounds are full.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Williams, Outdoor Recreation Planner, Royal Gorge Resource Area, 3170 E. Main Street, Canon City, CO 81212; telephone (719) 275–0631.

SUPPLEMENTARY INFORMATION: The campground fee notice and the supplementary rules are applicable to the following locations: Sand Gulch Campground: SW¼NW¼NE¼, NW¼SW¼NE¼, S½NE¼SW¼NE¼, N½SE¼SW¼NE¼, SE¼NE¼NW¼, NE¼SE¼NW¼ Section 33, T. 16 S., R. 70 W., 6th Principal Meridian.

The Bank Campground: SE¼SE¼SW¼ Section 21 and W½NW¼NE¼, NE¼SW¼NE¼, E½SW¼NE¼, W½SE¼NE¼, NE¼NE¼NW¼ Section 28, T. 16 S., R. 70 W., 6th Principal Meridian.

The purpose of the supplementary rules is to provide for the protection of persons, property, and public lands and resources. The authority for establishing supplementary rules is contained in 43 CFR 8365. These rules will be available in the Royal Gorge Resource Area office and will be posted in both campgrounds. Violation of these rules is punishable by a fine or imprisonment as defined in 18 USC 3571.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 95–5089 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–JB–M

[OR–943–1430–01; GP5–074; OR–48631]

Termination of Proposed Withdrawal; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has canceled its application to withdraw 222.77 acres of public land for protection of the Mariposa Botanical Area located in Jackson County, Oregon. This action will terminate the proposed withdrawal and will relieve the land of the temporary segregative effect. The minerals are not in Federal ownership.

DATES: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6171.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 58 FR 26153, April 30, 1993, as corrected by 58 FR 29254, May 19, 1993, which segregated the land described therein from settlement, sale, location, or entry under the general land laws, including the United States mining laws, subject to valid existing rights. The purpose of the proposed withdrawal was to protect the Mariposa Botanical Area. The applicant agency has determined that the proposed withdrawal is no longer needed and has canceled the application in its entirety as to the following described land:

Willamette Meridian

T. 41 S., R. 2 E.,
Sec. 8, those portions of the W½NE¼, NW¼, and N½SW¼ lying westerly of Interstate 5 and excepting lands now owned by the State of Oregon as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

The area described contains approximately 222.77 acres in Jackson County.

At 8:30 a.m. on April 3, 1995 the proposed withdrawal will be terminated and the land will be relieved of the segregative effect of the above-referenced application.

Dated: February 16, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–5147 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–33–P

Naitonal Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meetings

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held monthly for the remainder of calendar year 1995 (with the exception of July and December) to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. Meetings of the Advisory Commission are scheduled for the following at San Francisco and at Point Reyes Station, California:

Wednesday, March 15—San Francisco, CA
Wednesday, April 19—San Francisco, CA
Saturday, May 6—Point Reyes Station, CA
Wednesday, June 14—San Francisco, CA
Wednesday, August 16—San Francisco, CA
Saturday, September 16—Point Reyes Station, CA
Wednesday, October 18—San Francisco, CA
Wednesday, November 15—San Francisco, CA

All meetings of the Advisory Commission will be held at 7:30 p.m. at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco or at the Dance Palace, corner of 5th and B Streets, Point Reyes Station, California, unless otherwise noticed. The time for the meetings at Point Reyes Station will be noticed to the public at least 15 days prior to these meetings. Information confirming the time and location of all Advisory Commission meetings can be received by calling the Office of the Staff Assistant at (415) 556–4484.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Ms. Naomi T. Gray
Dr. Howard Cogswell
Mr. Michael Alexander
Mr. Jerry Friedman
Ms. Lennie Roberts
Ms. Yvonne Lee
Ms. Sonia Bolaños
Mr. Trent Orr
Mr. Redmond Kernan
Ms. Jacqueline Young
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams
Mr. Mel Lane

Anticipated Agenda items at meetings this year will include:

- Update reports on the Presidio planning process.
- Presentation of the GGNRA mushroom collection staff report.
- Reports on work of the Golden Gate National Park Association.
- Reports on programs and projects of GGNRA ''park partners''.
- Status reports on the proposed Tomales Bay Protection Bill.
- Reports on GGNRA education programs.
- Report from the National Biological Service.
- Presentation on plans for the northern waterfront at Crissy Field.
- Planning for the Sutro Historical District.
- Updates on issues concerning management and planning at Point Reyes NS.

These meetings will also contain Superintendent's and Presidio General Manager's Reports.

Specific final agendas for these meetings will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 556–4484.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. A transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: February 17, 1995.

Brian O'Neill,

General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 95–5125 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0087), Washington, DC 20503, telephone 202–395–7340.

Title: Abandoned Mine Land Problem Area Description Form
OMB approval number: 1029–0087
Abstract: This form will be used to update the Office of Surface Mining Reclamation and Enforcement's inventory of abandoned mine lands. From this inventory, the most serious problem areas are selected for reclamation through the apportionment of funds to States and Indian tribes.
Bureau Form Number: OSM–76
Frequency: On occasion
Description of respondents: State Governments and Indian Tribes
Estimated completion time: 3 hours
Annual responses: 1,800
Annual burden hours: 4,800
Bureau clearance officer: John A. Trelease, 202–343–1475.

Dated: December 6, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 95–5082 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions

on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0089), Washington, D.C. 20253, telephone (202) 395–7340.

Title: Exemption for Coal Extraction Incidental to Extraction of Other Minerals—30 CFR 702

OMB Number: 1029–0089

Abstract: This part implements the exemption in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Public Law 95–87. It requires the regulatory authority to make a determination of exemption from the requirements of the Act for operators extracting less than 16⅔ tons of coal incidental to the extraction of other minerals. This information will be used by the regulatory authority to make that determination.

Bureau Form Number: None.

Frequency: As Required

Description of Respondents: Producers of Coal and other Minerals

Estimated Completion Time: 13 hours

Annual Responses: 51

Annual Burden Hours: 633

Bureau Clearance Officer: John A. Trelease, (202) 343–1475.

Dated: December 27, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 95–5083 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0080), Washington, D.C. 20503, telephone 202–395–7340.

Title: Training, Examination, and Certification of Blasters

OMB Number: 1029–0080

Abstract: Sections 515(b)(15)(D) and 719 of Pub. L. 95–87 require that all blasting operations be conducted by trained and competent persons as certified by the regulatory authority. The regulations provide for the training, examination, and certification of persons engaging in blasting or the use of explosives in surface coal mining operations. The information collected is used to determine the adequacy of State blasting programs

Bureau Form Number: Not applicable.

Frequency: One-time requirement

Descriptions of Respondents: State Regulatory Authorities

Estimated Completion Time: 1 hour

Annual Responses: 1 hour

Annual Reporting Burden: 1 hour

Bureau Clearance Officer: John A. Trelease, (202) 343–1475.

Dated: January 27, 1995.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 95–5084 Filed 3–1–95; 8:45 am]

BILLING CODE 4310–05–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the office of Sedgwick Noble Lowndes, Seven Penn Center, 10th Floor, 1635 Market Street, Philadelphia, Pennsylvania, on April 3, 1995, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been made that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: February 16, 1995.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 95–5174 Filed 3–1–95; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Cape Fear Community College et al.,* Civil Action No. 7:95–CF–19–F3, was lodged on February 21, 1995, with the United States District Court for the Eastern District of North Carolina. This agreement resolves a judicial enforcement action brought by the United States against the defendants pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. § 9607, for the recovery of response costs incurred by the United States in connection with the New Hanover County Airport Burn Pit Superfund Site, (''the Site'') located in Wilmington, New Hanover County, North Carolina.

The consent decree requires the settling defendants to pay 100 percent of the past response costs which the United States has incurred at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cape Fear Community College, et al.,* DOJ Ref. #90–11–2–885.

The proposed consent decree may be examined at the Office of the United States Attorney, Federal Building, Suite 800, 310 New Bern Avenue, Raleigh, North Carolina, 27522–1461, and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street N.E., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street N.W., 4th Floor Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street N.W., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5,00 (25 cents per page

reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–5142 Filed 3–1–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Changes in Status of an Extended Benefit (EB) Period for the State of Alaska

This notice announces a change in benefit period eligibility under the EB Program for the State of Alaska.

Summary

The following changes have occurred since the publication of the last notice regarding States' EB status:

- January 29, 1995—Alaska's 13-week insured unemployment rate for the week ending January 14, 1995 exceeded 6.0 percent, causing the State to trigger ''on'' EB effective January 29, 1995.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State beginning an EB period, the State employment security agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the programs, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on February 23, 1995.

Doug Ross,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 95–5120 Filed 3–1–95; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Rothermel Coal Company

[Docket No. M–95–07–C]

Rothermel Coal Company, R.D. #1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 11 Slope (I.D. No. 36–07558) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Rothermel Coal Company

[Docket No. M–95–08–C]

Rothermel Coal Company, R.D. #1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 11 Slope (I.D. No. 36–07558) located in Northumberland County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Rothermel Coal Company

[Docket No. M–95–09–C]

Rothermel Coal Company, R.D. #1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (quantity and location of firefighting equipment) to its No. 11 Slope (I.D. No. 36–07558) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Rothermel Coal Company

[Docket No. M–95–10–C]

Rothermel Coal Company, R.D. #1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its No. 11 Slope (I.D. No. 36–07558) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Rothermel Coal Company

[Docket No. M–95–11–C]

Rothermel Coal Company, R.D. #1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its No. 11 Slope (I.D. No. 36–07558) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Stephen Shingara Jr. Coal Company

[Docket No. M–95–12–C]

Stephen Shingara Jr. Coal Company, R.D. #1, Box 369, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 1 Slope (I.D. No. 36–02280) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative

methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Stephen Shingara Jr. Coal Company

[Docket No. M–95–13–C]

Stephen Shingara Jr. Coal Company, R.D. #1, Box 369, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 1 Slope (I.D. No. 36–02280) located in Northumberland County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Stephen Shingara Jr. Coal Company

[Docket No. M–95–14–C]

Stephen Shingara Jr. Coal Company, R.D. #1, Box 369, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (quantity and location of firefighting equipment) to its No. 1 Slope (I.D. No. 36–02280) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Stephen Shingara Jr. Coal Company

[Docket No. M–95–15–C]

Stephen Shingara Jr. Coal Company, R.D. #1, Box 369, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its No. 1 Slope (I.D. No. 36–02280) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Stephen Shingara Jr. Coal Company

[Docket No. M–95–16–C]

Stephen Shingara Jr. Coal Company, R.D. #1, Box 369, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its No. 1 Slope (I.D. No. 36–02280) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Frank Branch Mining, Inc.

[Docket No. M–95–17–C]

Frank Branch Mining, Inc., Route 1, Box 200, Dunlow, West Virginia 25511 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Frank Branch No. 1 Mine (I.D. No. 46–07838) located in Wayne County, West Virginia. The petitioner proposes to replace a padlock on battery plug connectors on mobile battery-powered machines with a threaded ring and a spring loaded device to prevent the plug connector from accidently disengaging while under load; to have a warning tag on all battery plug connectors on the battery-powered machines that states ''do not disengage plugs under load;'' and to instruct all persons required to operate or maintain the battery-powered machines in the safe practices and provisions provided for in the alternative method of compliance. The petitioner states that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Frank Branch Mining, Inc.

[Docket No. M–95–18–C]

Frank Branch Mining, Inc., Route 1, Box 200, Dunlow, West Virginia 25511 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Frank Branch No. 2 Mine (I.D. No. 46–08412) located in Wayne County, West Virginia. The petitioner proposes to replace a padlock on battery plug connectors with a threaded ring and a spring loaded device on mobile battery-powered machines to prevent the plug connector from accidently disengaging while under load; to have a warning tag on all battery plug connectors on the battery-powered machines that states ''do not disengage plugs under load;'' and to instruct all persons required to operate or maintain the battery-powered machines in the safe practices and provisions provided for in the alternative method of compliance. The petitioner states that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

13. Copperas Coal Corporation

[Docket No. M–95–19–C]

Copperas Coal Corporation, P.O. Box 4544, Chapmanville, West Virginia 25508 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Red Oak Mine (I.D. No. 46–08135) located in Boone County, West Virginia. The petitioner proposes to replace a padlock on battery plug connectors with a threaded ring and a spring loaded device on mobile battery-powered machines to prevent the plug connector from accidently disengaging while under load; to have a warning tag on all battery plug connectors on the battery-powered machines that states ''do not disengage plugs under load''; and to instruct all persons required to operate or maintain the battery-powered machines in the safe practices and provisions provided for in the alternative method of compliance. The petitioner states that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of

protection as would the mandatory standard.

14. Eighty-Four Mining Company

[Docket No. M–95–20–C]

Eighty-Four Mining Company, P.O. Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Mine 84 (I.D. No. 36–00958) located in Washington County, Pennsylvania. The petitioner proposes to use high-voltage (4,160 volts) cables inby the last open crosscut to supply power to longwall face equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

15. Minnesota Ore Operations, USX Corporation

[Docket No. M–95–03–M]

Minnesota Ore Operations, USX Corporation, 600 Grant Street, room 1580, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 56.15014 (eye protection when operating grinding wheels) to its Minntac Mine (I.D. No. 21–00282); its Minntac Plant (I.D. No. 21–00820); and its Maintenance Department (I.D. No. 21–00819) all located in St. Louis County, Minnesota. The petitioner proposes to continue using pedestal grinders with safety shields; to continue providing safety glasses, including prescription glasses to all employees for them to wear while working, except in office areas; and to discontinue using face shields when employees are wearing safety glasses while operating pedestal grinders equipped with safety shields. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 3, 1995. Copies of these petitions are available for inspection at that address.

Dated: February 24, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–5141 Filed 3–1–95; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL CAPITAL PLANNING COMMISSION

Master Plan Submission Requirement

AGENCY: National Capital Planning Commission.

ACTION: Final master plan submission requirements.

SUMMARY: On November 3, 1994, the Commission adopted several amendments to its Master Plan Submission Requirements, originally approved on September 6, 1984 and subsequently amended on November 7, 1985. The Commission's Master Plan Submission Requirements are the basic set of guidelines used by staff to direct Federal and District of Columbia agencies in preparing their master plan submissions to the Commission. The changes to the requirements are primarily designed to incorporate Administration policy directives and current and emerging planning and design concerns which the Commission is now emphasizing in working with agencies preparing master plan submissions. Briefly, Sec. 3.A.1.f. has been changed to emphasize the need for Federal agencies, as they prepare their master plans, to take into greater consideration the Comprehensive Plan for the National Capital's employee parking policies which are designed to encourage reduced reliance on single-occupant vehicles. Consequently, the new requirements include a provision calling for the preparation of a Transportation Management Program for sites of 100 or more employees.

Sections 3.B.2.c and 3.B.3.a are new sections which are intended to promote a more consistent treatment and recognition of design issues in Federal Master Plans throughout the National Capital Region. Amendments to Sec. 4.A provide for the use of metric standards in master plan maps and drawings in accordance with Executive Order 12770, Metric Usage in Federal Government Programs. A new section, sec. 4.E, is meant to encourage Federal agencies to consider providing their master plan submissions using some of the current computer-based planning and design technologies widely available in the market today, such as Geographic Information Systems (GIS) and Computer Aided Design (CAD) packages. Other technical and clarifying changes to the requirements are included as well.

FOR FURTHER INFORMATION CONTACT: Ronald E. Wilson, Director for Planning, Review & Implementation Division, National Capital Planning Commission, 801 Pennsylvania Avenue, NW., Suite 301, Washington, D.C. 20576 or (202)724–0191.

SUPPLEMENTARY INFORMATION:

Section 1—Introduction

Section 5(a) of the National Capital Planning Act of 1952, as amended, (hereinafter ''Planning Act''), provides that each Federal and District of Columbia agency prior to the preparation of construction plans originated by such agency for proposed developments and projects or to commitments for the acquisition of land, to be paid for in whole or in part from Federal or District funds, shall advise and consult with the National Capital Planning Commission (hereinafter ''Commission'') in the preparation by the agency of plans and programs in preliminary and successive stages which affect the Comprehensive Plan for the National Capital.

A master plan is an integrated series of documents which present in graphic, narrative, and tabular form the present composition of an installation and the plan for its orderly and comprehensive long-range development, generally over a period of 20 years. The Commission has determined that an approved master plan is a required preliminary stage of planning prior to agency preparation and submission to the Commission of site and building plans for individual projects. Master plans are necessary for installations on which more than one principal building, structure, or activity is located or is proposed to be located.

Ordinarily, the Commission will not approve, or recommend favorably on, project plans for an installation for which there is no approved master plan unless the agency provides an explanation satisfactory to the Commission as to the agency's reasons for not submitting a current master plan, or modification thereto, for the installation.

In accordance with Section 5(b) of the Planning Act, these requirements shall not apply to the Capitol Grounds or to the planning for structures within existing military, naval, or Air Force reservations erected by the Department of Defense during wartime or national emergency, except that the appropriate defense agency shall consult with the Commission as to any developments which materially affect traffic or require

coordinated planning of the surrounding areas.

These requirements are intended to be used in connection with proposed developments of the Federal and District of Columbia Governments, including civilian and military installations within the National Capital Region[1] (hereinafter ''Region''), except as provided above. The Commission, as a policy, limits its review of District of Columbia plans to matters of Federal interests.

The Executive Director of the Commission may extend, modify, or waive any requirement pertaining to the scope and content of a master plan on sites where such requirements cannot be met because of the unique or special character or quality of the installation affect. Where such extension, modification, or waiver involves contents of the master plan that may reasonably be expected to address or involve potential significant off-site impacts, the Executive Director shall provide notice to potentially affected public agencies and, if appropriate, provide opportunity for consultation.

Section 2—Use of Master Plan by the Commission and Other Agencies

A master plan is used by the Commission as a basic guide in its review of and action on:

A. Proposed land acquisitions, changes in land use, and/or preliminary and final site and building plans for individual construction and development projects on an installation within the region, pursuant to Section 5 of the Planning Act;

B. Preliminary and final site and building plans for Federal public buildings on an installation within the District of Columbia and District of Columbia Government buildings on an installation within the central area [2] of the District of Columbia (as concurrently defined by the Commission and the Council of the District of Columbia), pursuant to D.C. Code, 1981 edition, sec. 5432;

C. Proposed dispositions of land pursuant to the Federal Property and Administrative Services Act of 1949;

D. Annual capital budget proposals of Federal agencies, pursuant to Office of Management and Budget Circular A–11; and

E. Advance programs of capital improvements of Federal agencies, pursuant to Section 7(a) of the Planning Act, and multi-year capital improvements plans for the District of Columbia, pursuant to Section 7(b) of the Planning Act.

A master plan also serves as the basic planning document for intergovernmental coordination on developments and projects within an installation.

Section 3—Contents of Master Plan Submission

An installation master plan includes narrative materials and data, maps and drawings, and presentation materials which describe and illustrate existing conditions and proposed developments and changes in conditions on the installation.

A. *Narrative Materials and Data.* (See *Section 4—Form of Submission of Master Plan* for information on alternative methods of submitting required narrative materials and data.)

1. *Master Plan Report.* The master plan report shall include the following:

a. A description and analysis of existing conditions, including employee, visitor, and resident facilities and needs, with reference to the existing conditions map;

b. A description of the relationship of the proposed uses on the installation to the overall missions or responsibilities, functions, and facilities of the agency or agencies that are proposed to occupy the site;

c. A list of master planning objectives;

d. A description of the master plan proposals with reference to the master plan drawings;

e. A summary sheet for easy reference providing the following information for both existing conditions and long-range projections:

(1) Total acreage, including a breakdown in acreage of land area by use (for example: office/administrative, training, service);

(2) Total population, including a breakdown by employees and visitors (by shifts), residents, and students, noting peak arrival and departure times;

(3) Building floor area;

(4) Total number of parking spaces; and

(5) Any other useful statistics and facts;

f. A description of the relationship of the proposed master plan to the Comprehensive Plan, in particular the Federal Facilities element's employee parking policies, and to the sponsoring agency's own agency-wide, long range plan and program for its installations within the Region, including the rationale for any aspect of the master plan not in conformance with the Comprehensive Plan;

g. A description of community participation efforts, including a description of the efforts of the sponsoring agency to coordinate with affected citizen groups in the vicinity of the installation, and a report of citizen views and comments on the submission;

h. A report on individuals, families, and business required to be relocated by the proposals, if any;

i. An analysis, pursuant to the implementation proposals of the Federal Employment element of the Comprehensive Plan, of the availability of affordable housing within reasonable commuting distances from the affected installation for employees and their families in cases in which the master plan proposes to change the location of, or add, 100 or more Federal employees;

j. The status of the sponsoring agency's coordination of its master planning with the local and state planning agencies and the Council of Governments, including reference to any existing agreements with such agencies;

k. A report on the consistency of the proposed master plan or revised master plan with applicable local, subregional, regional, and state development plans and policies, including a description of the rationale of the sponsoring agency in making its determination of consistency;

l. A historic preservation report which includes: an analysis of the effects, if any, that the master plan will have on recognized historic resources both on the installation or in the vicinity; and the status of compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, if applicable (Compliance must be completed prior to Commission action.);

m. A description of the predominate design idea, or set of ideas, which (1) relate the urban design framework and land use proposals within the master plan and (2) will guide the general design, character, materials and other aspects of buildings, site improvements and landscaping on the installation in the future;

n. A Transportation Management Program (TMP) for installations with 100 or more employees (including existing and proposed employees). The TMP should incorporate the following:

(1) A description of existing and projected peak hour traffic by mode, with indicated points of entrance and exit, the number of existing and proposed bicycle spaces, as well as transit routes and stops and pedestrian

[1] ''Region'' or ''National Capital Region'' means the District of Columbia; Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries.

[2] The ''Central Area'' of the District of Columbia as currently defined is that area contained within the boundaries of the Downtown and Shaw School Urban Renewal Areas.

facilities serving the installation, both on-site and in the nearby area; and a summary of existing and proposed parking by type of assignment (official cars, vanpools, carpools, single-occupant vehicles, handicapped persons, visitors, etc.);

(2) A description of the Federal agency's existing strategies for assisting employee's commute to work;

(3) Stated goals and objectives for the TMP, such as trip reduction, mode split changes, or vehicle occupancy rate increases;

(4) An evaluation of projected transportation impacts resulting from master plan development and description of potential TMP mitigation measures;

(5) A description of the process for monitoring and evaluating the achievement of goals and objectives and adjusting TMP strategies, as needed; and

(6) A summary of the relationship of the TMP provisions to transportation management and air quality requirements of local, state and regional agencies, including provisions for working cooperatively with affected agencies to address those requirements.

For installations where future site tenants are undetermined, TMP information should be developed to the extent feasible at the time of the initial preparation of the Master Plan, with supplementary information to be developed when tenants are established.

o. A description of proposed energy conservation strategies and policies related to the siting and design of new buildings, the retrofitting of existing structures, the use of transportation facilities, and the consumption of renewable energy resources for the purpose of complying with Federal energy efficiency objectives;

p. Water quality management strategies and policies for controlling the impacts of any on-site discharges to natural drainage ways or to adjacent streams or wetlands and, in conjunction with the stormwater management plan required pursuant to Section 3.B.3.e. for controlling erosion and sedimentation and other non-point sources of pollution; and

q. A staging program reflecting the graphic staging plan required pursuant to Section 3.B.3.F., that indicates in narrative and/or tabular form the proposed sequence of development over the period covered by the master plan.

In cases in which information in the Master Plan Report is fully provided in the required environmental documentation, it need not be repeated in the Master Plan Report.

2. *Environmental Document.* The environmental document prepared by the sponsoring agency pursuant to the National Environmental Policy Act of 1969, as amended, and Council on Environmental Quality Regulations shall be a part of the master plan submission. The document shall be an environmental impact statement, if required pursuant to Section 102(2)(C) of NEPA. If an EIS is not required, an environmental assessment shall be submitted. The environmental document should be prepared in consultation with the Commission, pursuant to Section S.C. of these requirements and the Commission's Environmental Policies and Procedures.

B. *Maps and Drawings.* (See *Section 4—Form of Submission of Master Plan* for information on alternative methods of submitting required maps and drawings.)

1. *Vicinity Map.* The vicinity map shall show the location of the installation in relation to well-known features of the surrounding community within at least one mile from the installation, such as major transportation facilities, natural features, and public facilities. Existing land uses and zoning shall be shown on the map for the area surrounding the installation. Where adopted local and/or state plans propose changes in surrounding transportation facilities, land use, or zoning, the proposed changes shall be shown on the vicinity map. If the proposed changes cannot be clearly depicted on a vicinity map in combination with existing conditions, a separate vicinity map showing the installation in relation to planned surrounding conditions shall be provided.

2. *Inventory Maps.* The following inventory maps shall be prepared from a common base map which depicts existing physical conditions on the installation, with the coverage of the map extending beyond the boundaries of the installation in all directions for at least one city block in urban areas and ¼ mile in suburban and rural areas:

a. *Existing land use map.* The existing land use map shall indicate by appropriate categories the allocation of land uses on the installation. This allocation should also be provided in tabular form on the existing land use map. (An itemized list of suggested land use categories is available from the Commission staff.)

b. *Existing conditions map.* The existing conditions map shall include the following:

(1) Internal road system, entrance and exist locations, with existing peak hour traffic counts, the number of existing parking spaces for each site, building, and facility, and public transit routes and stops. (This information may be shown on a separate map entitled ''Existing Circulation Map'', if desired.);

(2) All existing buildings, structures, and other manmade improvements, indicating the use and height of principal buildings and structures;

(3) Properties and districts listed in the National Register of Historic Places or on local historical registers;

(4) Existing wooded areas, watercourses, ultimate 100 year flood plains, wetlands, and other significant natural areas and features;

(5) Existing typography of the installation at a contour interval that clearly indicates the configuration of the land (generally at not less than five-foot intervals);

(6) Major utilities; and

(7) If the installation is located within the State of Maryland, areas of critical concern to the State of Maryland as identified by the Maryland Department of State Planning, as well as officially designated coastal zone areas and ''primary management areas'' and ''woodland buffers'' along the Patuxent River within the region, as defined in the Patuxent River Policy Plan, Maryland Department of State Planning.

c. *Existing Urban Design Framework Diagram.* The existing urban design framework diagram shall include the following:

(1) Significant natural and man-made features, such as distinctive building groupings or alignments, important formal or informal landscape compositions, special views and vistas, special streets, scenic routes, gateways or edges, etc., noting the role such elements serve in either unifying the installation, manifesting its overall form or precincts therein, or contributing to or reinforcing a larger urban design context such as the National Capital's urban design framework or other Federal interest; and

(2) Intrusions, barriers, gaps or other disparate conditions affecting the integrity of the urban design qualities identified above.

3. *Master Plan Proposals.* The following maps illustrating the master plan proposals shall be prepared from a common base map which depicts future physical conditions to be achieved on the installation through the master plan, with the coverage of the map extending beyond the boundaries of the installation as required on the inventory base map:

a. *Urban Design Framework Diagram.* The urban design framework diagram should precede and be more diagrammatic than the maps listed below. The framework diagram shall graphically indicate the retention,

enhancement or modification of the inventoried urban design features and the broad urban design principles and development controls which, together, serve to support and strengthen the intended form and character of the installation.

b. *Land Use Plan.* The land use plan shall indicate by appropriate categories the proposed general land use of all land within the installation.

c. *Circulation Plan.* The circulation plan shall indicate at least the following:

(1) The proposed internal road system of the installation incorporating existing-to-remain and proposed roads and showing the functional classification of all roads;

(2) Existing-to-remain and proposed ingress and egress points serving the installation and their relationship to the existing, programmed, and planned roads immediately adjacent to the facility;

(3) Existing-to-remain and proposed off-street parking facilities showing the number of existing or estimated parking spaces for each separate facility;

(4) The proposed pedestrian circulation system, incorporating existing features to remain;

(5) The proposed public transportation system showing the routes and stops serving the installation; and

(6) Proposed bicycle paths, if any, incorporating existing features to remain.

d. *Site Development Plan.* This site development plan shall indicate the general location and use of all existing to-remain and proposed buildings and structures, the general order magnitude of building scale and orientation, and other site improvements such as landscaping. This site development plan shall be accompanied by two site development cross sections. These sections shall be cut through the center of the site at approximately 90 percent to each other to show the topography of the site, buildings, structures and landscape elements. On large installations with low intensity development, the cross sections may be limited to areas of major building concentrations.

e. *Landscape Plan.* Ideally, the landscape plan should be presented as a separate plan. It may be incorporated in the site development plan if the combined plan satisfies all content requirements and is clearly readable. The landscape plan is not intended to present precise landscaping proposals but rather to indicate the general landscaping concepts to be achieved in future projects. The landscape plan, shall indicate at least the following:

(1) Wooded areas, including those to be retained and cleared, and, in urbanized sites, the general location of all existing trees one foot or more in diameter to be retained or removed;

(2) The general location and extent of all proposed landscaping within the installation; and

(3) Existing-to-remain and proposed topography of the installation at a contour interval that clearly shows the relationship of the proposed changes to the existing topography.

f. *Stormwater Management Plan.* The stormwater management plan shall indicate the location and size of natural drainage ways, storm sewer line and outfalls, infiltration devices, retention and detention ponds, storm drainage outfalls, and any other mitigation measures to control storm water runoff on the installation, including measures required by state or local law, with back-up computations.

g. *Staging Plan.* The staging plan shall graphically illustrate the proposed sequence of development over the projected period covered by the master plan in five-year development stages. Projects to be developed in the initial five-year stage shall accord with the sponsoring agency's proposed capital improvements program submitted annually to the Commission under Section 7(a) of the Planning Act and described in the Commission's Federal Capital Improvements Program for the National Capital Region.

C. Presentation Materials.

1. *Models.* Models should be submitted with master plans for sites on which significant concentrations of new buildings programs are proposed to show the topography of the site and illustrate the site development, circulation, and landscape proposals. A joint determination will be made between the sponsoring agency and Commission staff regarding the need for a model. Where a model is needed, buildings may be shown in massing forms without depiction of architectural style or details. Models will be returned to the sponsoring agencies following action by the Commission.

2. *Photographs.* Sponsoring agencies shall submit photographs to aid in the review and evaluation of proposed mater plans. Where possible, photographs shall include both direct overhead and oblique aerial views, eye level panoramic views, and views of special features of the installation.

Section 4—Form of Submission of Master Plan

A. *Map Scales.* Maps should preferably be at a scale of 1:1000, or alternatively 1:2000 in the case of large installations that cannot be depicted on a single sheet at the larger scale. In the case of an unusually large Federal installation, sectionalized maps at either scale would be preferred together with an overall composite map of the entire installation at a scale appropriate to its size. Sponsoring agencies, in accordance with Executive Order 12770, ''Metric Usage in Federal Government Programs'', at the earliest feasible time, should submit their maps and drawings in metric units.

B. *Presentation and record map sheet sizes.* Presentation and record maps should be at a standardized sheet size, whenever possible. Individual sheets should be a maximum of 34 by 44 inches, in order to be compatible with the Commission's microfilm program.

C. *Reduced size maps.* The master plan maps shall also be reduced to page size for incorporation in the master plan submission. The reduced size maps may be incorporated in the Master Plan Report required in Section 3.A.l. If incorporated in the Master Plan Report, the reduced size maps may be of a size compatible with the format of the report selected by the sponsoring agency. If submitted separately from the Master Plan Report, the reduced size maps shall be of a page size no larger than 8½″×14″.

D. *Numbers of copies of maps and other documents.* The numbers of copies of maps and other documents to be submitted vary according to jurisdiction and the related referral requirements that must be met by the Commission. (See Sections 5.F. and 8.). Copies of full size maps and other required master plan documents shall be submitted according to the following schedule:

Jurisdiction	Number of sets
For installations within the District of Columbia requiring regional review	13 complete sets of maps and supporting documents.
For installations in Maryland requiring regional review	16 complete sets of maps and supporting documents.
For installations in Virginia requiring regional review	16 complete sets of maps and supporting documents.
For installations in the District of Columbia, Maryland or Virginia not requiring regional review.	3 complete sets of maps and supporting documents.

E. *Electronic Data Submissions.* Sponsoring agencies may provide their master plan submissions (maps and narrative) electronically. Agencies are encouraged to contact the staff to coordinate the procedures for electronic submissions.

Section 5—Master Plan Coordination and Review Process

The following steps are involved in the coordination and review of a master plan prior to and during its preparation by a sponsoring agency and following its submission to the Commission.

A. *Informal consultation with the Commission staff.* An informal consultation session with the Commission staff should be held by a sponsoring agency prior to initiating the preparation of a proposed master plan or a significant modification to an existing master plan.

At such a session, a joint determination will be made as to whether there are any unique or special characteristics of the affected installation which necessitate modification of any requirements respecting the master plan submission. A joint determination will also be made as to whether, because of special characteristics of an installation or proposed developments to be accommodated by a master plan, there is a need for a presentation of any type to the Commission prior to the preparation and submission of the master plan. The session will also be used to plan for early consultation with other organizations as part of the intergovernmental review process.

B. *Early consultation and discussion of proposed master plan with other affected government agencies.* After it has been contacted by a sponsoring Federal agency concerning the initiation of planning for an installation in the region, the Commission, as appropriate, will contact the planning agency, intergovernmental review official, chief administrative officer, and responsible elected official of the affected local government(s) and the affected area and state clearinghouse(s) about the work involved and the anticipated schedule for submission of the proposed master plan or revised master plan to the Commission. Where appropriate, the Commission will arrange a meeting of concerned agencies and officials with the agency sponsoring the master planning work to discuss that work, prior to any submission to the Commission.

The purpose of this step is to give local, regional, and state agencies an opportunity to learn about proposed Federal plans being developed in the region and permit early identification of possible questions, issues and concerns. This step in the process has been established in accordance with the Commission's ''Procedures for Intergovernmental Cooperation in Federal Planning in the National Capital Region.'' Although this step applies as a requirement only to sponsoring Federal agencies, the Commission will, upon request of an affected District of Columbia agency preparing a master plan for an installation outside the District of Columbia within the region, arrange similar early consultation with the affected local, regional, and state agencies and officials.

C. *Determination of appropriate environmental document for the proposed master plan.* Master plan submissions must include appropriate environmental documentation, pursuant to Section 3.A.2. of these requirements and the Commission's Environmental Policies and Procedures.

The sponsoring agency should consult with the Commission at the earliest possible time in its master planning to determine whether projects covered by the master plan will require Commission approval thereby requiring Commission participation with the sponsoring agency in determining the appropriate environmental document for the master plan.

The environmental determination of the sponsoring agency must be made, and the environmental document submitted, in accordance with the Commission's Environmental Policies and Procedures. The required consultation regarding environmental documentation may occur in the initial informal consultation by the sponsoring agency with the Commission staff.

D. *Submission of the proposed master plan to the Commission for review and action.* The sponsoring agency shall submit the master plan in accordance with established monthly deadlines, which are available from the Commission.

E. *Commission initiation of procedures for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, if applicable.* Master plan submissions must include a historic preservation report, pursuant to Section 3.A.1.1. of these requirements. If Section 106 of the Act is applicable, the sponsoring agency shall complete compliance therewith prior to Commission action.

Upon receipt of a master plan submission from the District of Columbia Government for one of its installations within the central area of the District of Columbia, the Executive Director of the Commission will determine whether the master plan is subject to the provisions of Section 106. If he so determines, the Executive Director will initiate procedures for compliance. Compliance will be completed prior to Commission action on the proposed master plan.

F. *Referral where appropriate, of the proposed master plan to the responsible local, regional and state agencies.* Upon receipt of a master plan, the Commission will refer the plan to the affected local planning agency and regional and state clearinghouse for review and comment. The master plan will in turn also be referred by the regional clearinghouse (the Metropolitan Washington Council of Governments) to the designated intergovernmental review official of the affected jurisdiction for review and comment.

G. *Resolution of planning issues, if any, between local and Federal agencies.* Upon the identification of planning issues raised by a proposed master plan, the Commission staff in conjunction with the staff of the Council of Governments, will work with the affected local, regional or state agencies and the Federal agency to resolve such issues in accordance with ''Procedures for Resolving Planning Issues That May Arise Between Local and Federal Agencies in the National Capital Region'' adopted by the Commission on November 18, 1982, and the Commission's Procedures for Intergovernmental Cooperation in Federal Planning in the National Capital Region.

H. *Referral, where appropriate, of the proposed master plan to the Commission's Coordinating Committee.* Upon receipt of a master plan for a Federal or District of Columbia installation in the District of Columbia, the Commission will refer the master plan to its Coordinating Committee, pursuant to Section 2(d) of the Planning Act, for review and coordination. The committee is composed of representatives of Federal and District of Columbia agencies involved in planning and development activities. The master plan will also be referred to the Council of Governments and the designated intergovernmental review official of the District of Columbia.

I. *Review and preparation of recommendations by the Commission staff.* Following the receipt of comments from other organizations and the Coordinating Committee, where appropriate, the staff will prepare recommendations for action by the Commission on the master plan. The staff recommendations will be provided to the Commission and made available to the sponsoring agency and the general public approximately one week in advance of the schedule Commission review and action on the plan.

J. *Notification to the public and public participation in Commission review.* In accordance with the Commission's ''Revised Procedures for Public Participation'', organizations in the vicinity of an installation will receive a notice titled ''Tentative Agenda Items'' indicating the tentative schedule for the Commission's review of a master plan submission. Organizations or individuals may submit written comments for consideration by the Executive Director of the Commission in the preparation of staff recommendations. In addition, organizations or individuals may appear before the Commission to comment on a master plan submission and/or to comment on the Commission staff's recommendations on the submission.

K. *Review and action by the Commission.* The Commission will review the master plan submission at a scheduled meeting. The sponsoring agency will be notified by the staff of the schedule for Commission review, and the staff will coordinate with the agency concerning a presentation of the submission to the Commission.

L. *Official notification of Commission action on the master plan.* Notification of the Commission action on the master plan will be provided by letter to the sponsoring agency immediately following such action.

Section 6—Time Period for Review

Master plans for installations for which a referral to local, regional, and state agencies is required will be subject to a review period of approximately 90 days, whenever possible, 60 days of which will be devoted to review by the agencies receiving the referral. A sponsoring agency may request a reduction of 30 days of this review period from the Executive Director of the Commission is special and unusual circumstances warrant, but every effort should be made to comply with the 90-day review.

Section 7—Presubmission Requirements

As noted in Section 5.A. at the time of initial informal consultation on the proposed preparation of a master plan, the sponsoring agency and Commission staff will determine whether, because of special characteristics of an installation or the developments being considered for that installation, there is a need for any type of presentation to the Commission prior to the preparation and submission of the master plan. In some cases a presentation for information purposes may be appropriate to provide an opportunity for the Commission to become familiar at an early stage with an evolving development proposal.

In other cases, the submission of site boundaries, a development program, and development concepts may be required to obtain Commission views and action on an acquisition proposal pursuant to Section 5(a) of the Planning Act prior to the expenditure of funds for the preparation of a master plan. Where land is already under the jurisdiction of the sponsoring agency, the submission of development concepts to obtain Commission views on a particular proposal in advance of the preparation of a master plan may also be appropriate under certain circumstances. In cases where a presubmission of some form or a presentation is determined to be required or warranted, the contents will be determined through consultation by the sponsoring agency with the Commission staff.

Section 8—Amendments or Modifications to Master Plans

The process outlined above also applies to proposed modifications or revisions to master plans that have been previously approved by the Commission. Once a master plan has been approved, regional review of subsequent proposed modifications or revisions will be required only where the Executive Director of the Commission, in consultation with the sponsoring agency and affected local jurisdiction(s), determines that: (1) A major change in the character or intensity of an existing use is proposed, or (2) the proposed modifications or revisions would significantly change the off-site impact of the Federal activities and uses carried out within the site.

Section 9—Review and Updating of Master Plans

Agencies are encouraged to review master plans on a periodic basis to insure that both inventory material and development proposals are current. Such reviews should be conducted at least every five years. Sponsoring agencies should advise the Commission of the results of such reviews and provide to the Commission proposed schedules for the updating of master plans of a five-year cycle when updating is determined to be needed.

Robert E. Gresham,

Deputy Executive Director.

[FR Doc. 95–5160 Filed 3–1–95; 8:45 am]

BILLING CODE 7502–02–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for March 16, 1995 at 10 am in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, February 22, 1995.

Charles H. Atherton,

Secretary.

[FR Doc. 95–5085 Filed 3–1–95; 8:45 am]

BILLING CODE 6330–01–M

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee, 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: Alan T. Waterman Award Committee (#1172).

Date and Time: Monday, March 20, 1995; 8:30 a.m.–3:00 p.m.

Place: Room 320, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, Room 1220, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703/306–1096.

Purpose of Meeting: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the government in the Sunshine Act.

Dated: February 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5164 Filed 3–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development (HRD); 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 and Committee Code: Special Emphasis Panel In Human Resource Development.

Date and Time: March 20–21, 1995; 8:30 a.m.–4:30 p.m.

Place: Room 340; National Science Foundation; 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Rodolfo Tamez; Program Director, RIMI; Human Resource Development (HRD); Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1634.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Improvement In Minority Institutions (RIMI) 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: February 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5165 Filed 3–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Special Emphasis Panel in Biological Sciences (1754).

Date and Time: March 23–24, 1995; 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Room 390, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Karen Bennett, Program Director or Dr. Judith Plesset, Program Director, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1417.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open Session: March 24, 10:00 a.m. to 11:00 a.m., to discuss goals and assessment procedures. Closed Session: March 23, 9:00 a.m. to 5:00 p.m.; March 24, 9:00 a.m. to 10:00 a.m. and 11:00 a.m. to 5:00 p.m. to review and evaluate Research Planning Grants and Career Advancement Awards for Women Scientists and Engineers (RPG/CAA) 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: February 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5166 Filed 3–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; 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 & Committee Code: Special Emphasis Panel in Biological Sciences (#1754).

Date and Time: March 27, 1995; 8 AM–5 PM.

Type of Meeting: Closed.

Place: Room 370, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Contact Person: Dr. John H. Porter, Program Director, Database Activities in the Biological Sciences, Room 615, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1470.

Agenda: To review and evaluate Database Activities 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: February 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5167 Filed 3–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; 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 Mathematical Sciences (1204).

Date and Time: March 20–21, 1995; 8:30 A.M. til 5:00 P.M.

Place: National Science Foundation, 4201 Wilson Boulevard, Rm 1020, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Joe Jenkins, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to National Science Foundation for financial support.

Agenda: To review and evaluate proposals for the Classical Analysis Program 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: February 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5162 Filed 3–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Dissemination; 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 Research, Evaluation and Dissemination.

Date and Time: March 19, 1995; 4:00 p.m. to 9:00 p.m., March 20, 1995; 8:00 a.m. to 8:00 p.m.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Nora Sabelli, Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Applications of Advanced Technologies Program.

Reason for Closing: Because 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 proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: February 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5161 Filed 3–1–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Dissemination; 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 Research, Evaluation and Dissemination.

Date and Time: March 20, 1995; 8:30 a.m. to 5:00 p.m.; March 21, 1995, 8:30 a.m. to 5:00 p.m.; March 22, 1995, 8:30 a.m. to 4:00 p.m.

Place: Rooms 880 and 1150, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Nora Sabelli, Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Networking Infrastructure for Education Program.

Reason for Closing: Because 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 proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

Dated: February 27, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–5163 Filed 3–1–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Niagara Mohawk Power Corporation; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–69, issued to Niagara Mohawk Power Corporation (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit 2 (NMP–2), located in Oswego County, New York.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application to amend the NMP–2 operating license dated July 22, 1993, as supplemented January 9, 1995. The proposed amendment would increase the licensed core thermal power from 3323 MWt to 3467 MWt, which represents an approximate increase of 4.3% over the current licensed power level. This request is in accordance with the generic boiling water reactor (BWR) power uprate program established by the General Electric Company (GE) and approved by the U.S. Nuclear Regulatory Commission (NRC) staff in a letter from W. Russell, NRC, to P. Marriotte, GE, dated September 30, 1991. Implementation of the proposed power uprate at NMP–2 will result in an increase of steam flow to approximately 105% of the current operating limit, but will require no changes to the basic fuel design. Core reload design and fuel parameters will be modified as power uprate is implemented to support the current 18-month reload cycle. The higher power level will be achieved by expanding the power/flow map and by increasing, slightly, reactor vessel dome pressure. The maximum recirculation flow limit will not be increased over the preuprate value. Implementation of this proposed power uprate will require minor modifications, such as, resetting of the low set safety relief setpoints, as well as the calibration of plant instrumentation to reflect the uprated power. Plant operating, emergency, and other procedure changes will be made where necessary to support uprated operation.

The proposed action involves NRC issuance of a license amendment to uprate the authorized power level by changing the operating license, including Appendix A of the license (Technical Specifications). No change is needed to Appendix B of the license (Environmental Protection Plan—Nonradiological).

The Need for the Proposed Action

The proposed action would authorize the licensee to increase the potential electrical output of NMP2 by approximately 45 megawatts and thus would provide additional electrical power to service domestic and commercial areas of the licensee's grid.

Environmental Impacts of the Proposed Action

The ''Final Environmental Statement (FES) related to operation of Nine Mile Point Nuclear Station, Unit No. 2'' was issued May 1985 (NUREG–1085). By letter of July 22, 1993, the licensee submitted the proposed amendment to implement power uprate for NMP2, which is the subject of this environmental assessment. Section 11.3 of the NMP2 power uprate licensing topical report (GE report NEDC–31994P, Revision 1) which was submitted as Enclosure 3 to NMPC's July 22, 1993, submittal, provided an environmental assessment of the proposed power uprate. Some environmental effects will remain the same, while power uprate may nominally increase others. Actual effects are at worst proportional to the approximately 5% increase in turbine steam flow. Increased core flow has no discernable effect on the environmental assessment.

The licensee provided information regarding the nonradiological and radiological environmental effects of the proposed action in the July 22, 1993, application and in its supplemental information dated January 9, 1995. The NRC staff has reviewed the potential nonradiological and radiological effects of the proposed action on the environment as described below.

Nonradiological Environmental Assessment

Power uprate will not change the method of generating electricity nor the method of handling any influents from minor effluents to the environment. Therefore, no new or different types of environmental impacts are expected.

The NRC staff reviewed the nonradiological impact of operation at uprated power levels on influents from and effluents to Lake Ontario. NMP–2 utilizes a closed-loop circulating water system and a natural draft cooling tower for dissipating heat from the main turbine condenser. Other equipment is cooled by the service water system. The cooling tower and service water system are operated in accordance with the requirements of the State Pollutant Discharge Elimination System (SPDES) Permit No. NY–000–1015, which was issued by the New York State Department of Environmental Conservation (NYSDEC) on October 26, 1994, and became effective on December 1, 1994. It expires on December 1, 1999. This new discharge permit was issued by New York State since the previous permit had expired.

The withdrawal of cooling water from Lake Ontario is expected to increase slightly due to the increased heat loads. Emergency system flows are expected to remain generally unchanged. Increased heat loads are expected for nonsafety related loads such as the main generator stator coolers, hydrogen coolers, and exciter coolers. These systems, as well as other systems (*e.g.*, RHR heat exchangers, emergency diesel generator coolers, and spent fuel pool heat exchangers) noted in Section 6 of the July 22, 1993, submittal are expected to require additional cooling and an increase in flowrate. The increase in water intake to the cooling tower is due to increased evaporation in the cooling tower. The increase in flowrate is expected to be small and within a nominal 5 percent increase. Conservatively assuming a 5 percent increase in the withdrawal rate, the intake approach flowrate velocity is expected to increase from 0.5 fps to 0.53 fps. Observations by the licensee have shown fish impingement to be very low and in most cases nonexistent. The NYSDEC has evaluated the potential effects of the current intake flowrate and has concluded that no special aquatic studies are required to assess the biological impact. No aquatic studies were included in the licensee's new SPDES discharge permit which was effective December 1, 1994. The licensee has stated that because the current intake flowrates are low and the aquatic impacts of withdrawal are minimal, an increase of 5 percent is not expected to result in a significant impact, if any impact at all. The NRC staff agrees with the licensee's assessment and does not expect any significant impact due to the 5 percent increase in withdrawal flowrate.

The licensee does not expect an increase in the cooling tower blowdown. The cooling tower blowdown rate is controlled by total copper concentration in the circulating water system and the economic use of water treatment chemicals. The current blowdown rate is approximately 40 percent of the designed rate and is restricted to ensure compliance with the total copper concentration limitation imposed by the SPDES permit and by economic use of water treatment chemicals. The licensee has stated that if the blowdown rate was increased by 5–10 percent in order to evaluate cooling tower efficiency and to reduce the cycles of concentration of natural salts in the circulating water system, the copper limitation could still be met and the flowrate impact would be less than design. In addition, the NYSDEC has evaluated the service water and cooling tower blowdown based on the original design flowrates, as well as the state of the art technology of the discharge diffuser. The NYSDEC has concluded that no thermal measurements or thermal plume studies are necessary because of the low flowrates and the design of the discharge structure. Therefore, the licensee concluded that because the withdrawal rate is currently low and the cooling tower blowdown rate is currently below original design, the 5 percent increase in water withdrawal or an increase in blowdown is not expected to result in any additional environmental impact since any increase in flowrate is expected to be no more than the original system design. The NRC staff has reviewed the licensee's assessment and concludes the increased flowrates will not result in a significant increase in environmental impact.

The licensee has conservatively estimated that the power uprate will result in an annual increase in dissolved solids from water passing through the soil in the area of the Energy Center of approximately 0.012 ppm. Since even the most sensitive species are not affected by soil salinization of less than 1,280 ppm, it is highly unlikely that even salt-sensitive species would be measurably affected by this additional deposition rate during operation of the NMP–2 cooling tower at power uprate conditions. Therefore, the NRC staff has concluded that the increase in cooling tower drift due to the proposed power uprate will have no significant increase in environment impact and would still be well below the levels of concern to local soil and vegetation.

Nonradiological effluent discharges from other systems were also considered. Nonradiological effluent limits for such systems as floor and equipment drains are established in the SPDES permit. Discharges from these systems are not expected to change significantly, if at all, because operation at uprated power levels are governed by the limits in the SPDES permit. Thus, the impact on the environment from these systems as a result of operation at uprated power levels is not significant.

With the exception of the cooling tower, all other significant noise producing equipment associated with the service water and circulating water systems are located inside buildings and/or well below grade where the noise level would have little, if any, environmental impact. There is no expected increase in cooling tower noise levels associated with the proposed power uprate since there are no plans to increase its flow rate as part of the proposed power uprate. The main turbine and generator will operate at the same speed and thus will not contribute to increased offsite noise. Although the main station transformers will operate at a slightly (approximately 4.3 percent) increased kilovolt-ampere level, the slight increase will cause an insignificant increase in the overall noise level. Therefore, the NRC staff has concluded that the outside noise level increase will be insignificant.

The licensee has stated that the proposed power uprate will not require any changes to the SPDES discharge permit nor to the NMP–2 Environmental Protection Plan. The NRC staff agrees with this assessment and, therefore, we have concluded that the proposed power uprate will have an insignificant impact on the nonradiological elements of concern.

Radiological Environmental Assessment

The licensee evaluated the impact of the proposed power uprate amendment to show that the applicable regulatory acceptance criteria relative to radiological environmental impacts will continue to be satisfied for the uprated power conditions. In conducting this evaluation, the licensee considered the effect of the higher power level on liquid radioactive wastes, gaseous radioactive wastes, and radiation levels both in the plant and offsite during both normal operation and post-accident.

The floor drain collector subsystem waste collector subsystem both receive

inputs from a variety of sources (*e.g.*, leakage from component cooling water system, reactor coolant system, condensate and feedwater system, turbine plant cooling water system, and auxiliary steam system). However, leakages from these systems are not expected to increase significantly since the operating pressures of these systems are either being maintained constant or are being increased only slightly due to the proposed power uprate.

The largest single source of liquid radioactive waste is from the ultrasonic cleaning of the condensate demineralizers. These demineralizers remove activated corrosion products which are expected to increase proportionally to the proposed power uprate. However, the total volume of processed waste is not expected to increase significantly, since the only appreciable increase in processed waste will be due to the slightly more frequent cleaning of these demineralizers. Based on a review of plant effluent reports and the slight increase expected due to the proposed power uprate, the NRC staff has concluded that the slight increase in the processing of liquid radioactive wastes will not have a significant increase in environment impact and that requirements of 10 CFR part 20 and 10 CFR part 50, appendix I, will continue to be met.

Gaseous radioactive effluents are produced during both normal operation and abnormal operation occurrences. These effluents are collected, controlled, processed, stored, and disposed of by the gaseous radioactive waste management systems which include the various building ventilation systems, the offgas system, and the standby gas treatment system (SGTS). The concentration of radioactive gaseous effluents released through the building ventilation systems during normal operation is not expected to increase significantly due to the proposed power uprate since the amount of fission products released into the reactor coolant (and subsequently into the building atmosphere) depends on the number and nature of fuel rod defects and is not dependent on reactor power level. The concentration of activation products contained in the reactor coolant is expected to remain unchanged, since the linear increase in the production of these activation products will be offset by the linear increase in steaming rate. Therefore, based on its review of the various building ventilation systems, the NRC staff has concluded that there will not be a significant adverse effect on airborne radioactive effluents as a result of the proposed power uprate.

Radiolysis of the reactor coolant causes the formation of hydrogen and oxygen, the quantities of which increase linearly with core power. These additional quantities of hydrogen and oxygen would increase the flow to the recombiners by 4.3 percent during uprated power conditions. The offgas system was originally designed for 105 percent of warranted steam flow which would not be exceeded during operation at the proposed uprated power level. Therefore, no changes will be required in the offgas system and since the offgas system will be operated within the originally evaluated design conditions, there will be no environmental impact that was not previously evaluated.

The SGTS is designed to minimize offsite radiation dose rates during venting and purging of both the primary and secondary containment atmosphere under accident or abnormal conditions. This is accomplished by maintaining the secondary containment at a slightly negative pressure (more negative than or equal to -0.25 inch water gauge) with respect to the outside atmosphere and discharging the secondary containment atmosphere through high-efficiency particulate air (HEPA) filters and charcoal absorbers. As noted in the Updated Safety Analysis Report (USAR), the SGTS charcoal absorbers are designed for a charcoal loading capacity of 10 mgI/gC and get the design requirements for 30-day and 100-day loss-of-coolant accident (LOCA) scenarios. The proposed power uprate would increase the post-LOCA iodine loading by 4.3 percent but the charcoal loading would still remain within the 10 mgI/gC loading and therefore, there would be no significant increase in environmental impact.

The licensee has evaluated the effects of the power uprate on in-plant radiation levels in the NMP–2 facility during both normal operation and post-accident. The licensee has concluded that radiation levels during both normal operation and post-accident may increase slightly (at most, proportional to the increase in power level). The slight increases in in-plant radiation levels expected due to the proposed power uprate are not expected to affect radiation zoning or shielding requirements. Individual worker occupational exposures will be maintained with acceptable limits by the existing as low as is reasonably achievable (ALARA) program which the licensee uses to control access to radiation areas. Therefore, the NRC staff has concluded that the slightly increased in-plant radiation levels will not have a significant environmental impact.

The offsite doses associated with normal operation are not significantly affected by operation at the proposed uprated power level and are expected to remain well within the limits of 10 CFR part 20 and 10 CFR part 50, appendix I. These limits are imposed by Technical Specifications 3/4.11.1, 3/4.11.2, 3/4.11.3, and 3/4.11.4, which will not be changed by the proposed power uprate. Therefore, the NRC staff has concluded that the offsite doses due to normal operation at the proposed power uprate conditions will not result in a significant environmental impact.

The dose evaluations for design basis accidents were performed for issuance of the current operating license based on 105 percent of the current rated power level. The proposed power uprate would be within the assumptions used during original licensing of the plant and, therefore, there will be no increase in environmental impacts over those evaluated in the NRC staff's Final Environmental Statement related to the operation of Nine Mile Point Nuclear Station, Unit No. 2 (NUREG–1085), May 1985.

The NRC staff has concluded that the NRC's FES (NUREG–1085) is valid for operation at the proposed uprated power conditions. The NRC staff also concluded that the plant operating parameters impacted by the proposed uprate would remain within the bounding conditions on which the conclusions of the FES are based.

The NRC staff has reviewed the licensee's reevaluation of the potential radiological and nonradiological environmental impacts for the proposed action. On the basis of this review, the NRC staff finds that the radiological and nonradiological environmental impacts associated with the proposed small increase in power are essentially immeasurable and do not change the conclusion in the FES that the operation of NMP–2 would cause no significant adverse impact upon the quality of the human environment.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological or nonradiological environmental impact.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternative with equal or greater impact need not be evaluated. The principal alternative would be to deny the requested amendment. Denial would not significantly reduce the environmental impact of plant operations, but would restrict operation

of NMP–2 to the currently licensed power level. Denial of the amendment would prevent the facility from generating the approximately additional 45 MWe that is obtainable from the existing plant.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the ''Final Environmental Statement related to the operation of Nine Mile Point Nuclear Station, Unit No. 2,'' dated May 1985.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and consulted with the New York State official regarding the environmental impact of the proposed action. The State official had no comment regarding the NRC's proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the application for amendment dated July 22, 1993, as supplemented January 9, 1995. These documents are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC 20555 and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 24th day of February 1995.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5137 Filed 3–01–95; 8:45 am]

BILLING CODE 7590–01–M

FOIA User Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public conference.

SUMMARY: The NRC will hold a Freedom of Information Act (FOIA) Users Conference as a part of its renewed commitment to improving openness and responsiveness to the public. The purpose of the conference will be to open communications between NRC and its FOIA user community, to explain alternatives for access to NRC information, and to obtain FOIA users' views for improving the process.

DATES: The meeting will be held on Thursday, March 23, 1995, from 9:30 a.m. to 12:00 p.m.

ADDRESSES: Conference Room T–6 A1 of the U.S. Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Ms. Gigi Rammling, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20055–0001. Telephone (301) 415–7090.

SUPPLEMENTARY INFORMATION: The general public is invited to participate, particularly those who contemplate the need to obtain information from the NRC in the future. Invitations have been sent directly to some frequent and more recent NRC FOIA requesters. However, because of limited seating, advance reservations will be required.

Reservations may be made by contacting Ms. Gigi Rammling at 301/415–7090. Those requiring special accommodations should contact Ms. Rammling no later than Monday, March 13, 1995.

Agenda

The agenda for the meeting will include the following:

(1) Overview of FOIA requirements;

(2) NRC's openness policy and current practices;

(3) Overview of NRC processing procedures;

(4) Question/Answer Session.

Dated at Rockville, Maryland this 27th day of February 1995.

For the Nuclear Regulatory Commission.

Carlton C. Kammerer,

Director, Division of Freedom of Information and Publications Services Office of Administration.

[FR Doc. 95–5136 Filed 3–1–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–261]

Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–23 issued to Carolina Power & Light Company (the licensee) for operation of the H.B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

The proposed amendment would increase the degraded grid voltage relay (DGVR) setpoint to comply with revised voltage criteria established by Carolina Power & Light Company's alternating current auxiliary electrical distribution system voltage/load flow/fault current study. The DGVR setpoint will be changed from 415 plus or minus 4 volts to 430 plus or minus 4 volts. The revised criteria would provide a voltage setting such that continuous duty, safety-related motors will not be allowed to operate at terminal voltages below the voltage required for proper operation for periods of time greater than the time delay setting of the DGVR.

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. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The increase in the DGVR setpoint will prevent motor operation at terminal voltages below which motor overheating and possible life reduction could occur, due to sustained offsite power degradation under the design basis plant operating scenario. The new setting ensures that the emergency buses are transferred to their respective diesel generators at offsite power voltage levels higher than allowed by the existing setting. Analysis has determined that the new DGVR setting will not result in unnecessary offsite power separations, due to motor starting transients, during normal power operation or postulated accident conditions.

The function of the DGVR remains unchanged. The design configuration of the DGVR circuit remains unchanged. The proposed amendment will increase the minimum voltage available at the safety

buses and maintain safety related loads within their voltage requirements under degraded conditions.

The change to the DGVR trip setpoint also considered the minimum bus recovery voltage following a transient that would reset the relay to prevent unnecessary transfers to the emergency diesel generators. With the offsite system at the minimum predicted voltage, the DGVRs will reset following a motor starting transient. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The higher DGVR setpoint improves the operation of continuous duty, safety-related motors, in that it ensures motor terminal voltages of sufficient value for proper operation. The higher setting has been evaluated against plant system transient voltage conditions under minimum predicted switchyard voltages and determined to result in no risk of spurious relay actuations. The proposed change is in the of DGVR only. The function of the DGVR circuit remains unchanged. Failure of the relays at their new setpoint would not change the failure analysis. The proposed amendment to the DGVR setpoint ensures appropriate automatic action will be taken in the event voltage sufficient to operate required vital electrical loads within acceptable voltage limits is not available. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed amendment will increase the minimum voltage limit at the emergency buses. This increase in DGVR setpoint ensures that the minimum voltage requirements for vital loads will be available including under degraded offsite voltage conditions or automatic action will occur to restore voltage. Calculations have determined that the proposed setpoint meets current design requirements. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 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 April 3rd, 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 Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these

requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 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 William H. Bateman: 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 R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 23, 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 Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland, this 23rd day of February 1995.

For the Nuclear Regulatory Commission.

Brenda L. Mozafari,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5138 Filed 3–1–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–3070–ML; ASLBP No. 91–641–02–ML (Special Nuclear Material License)]

Louisiana Energy Services, L.P. (Claiborne Enrichment Center); Memorandum and Order (Notice of Prehearing Conference and Evidentiary Hearing)

February 24, 1995.

This proceeding concerns the licensing of a proposed uranium enrichment facility in Claiborne Parish, Louisiana. Notice is hereby given that an evidentiary hearing in this proceeding will commence on Monday, March 13, 1995, at the First Floor Magistrate's Courtroom, United States Federal Courthouse, 300 Fannin Street, Shreveport, Louisiana 71101. The evidentiary hearing will begin immediately after a prehearing conference that will commence at 2:00 p.m. The evidentiary hearing will continue, to the extent necessary, on March 14–17 and March 20–24 at that same location, beginning at 9:00 a.m. each day.

Rockville, Maryland, February 24, 1995.

For the Atomic Safety and Licensing Board.

Thomas S. Moore,

Chairman, Administrative Judge.

[FR Doc. 95–5139 Filed 3–1–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–508–OL; ASLBP Docket No. 83–486–01–OL]

Washington Public Power Supply System; WPPSS Nuclear Project No. 3; Notice of Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for Washington Public Power Supply System (WPPSS Nuclear Project No. 3), with the above-identified Docket No., is hereby reconstituted by appointing Administrative Judge Charles Bechhoefer as Chairman of the Licensing Board in place of Administrative Law Judge Morton B. Margulies who has retired.

As reconstituted, the Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman
Richard F. Foster
Frederick J. Shon

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Chairman is: Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 24th day of February 1995.

James P. Gleason,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 95–5140 Filed 3–1–95; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A95–4; Order No. 1045]

Numa, Iowa 52575 (Charles H. Figge, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued February 24, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W. H. ''Trey'' LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

Docket Number: A95–4
Name of Affected Post Office: Numa, Iowa 52575
Name(s) of Petitioner(s): Charles H. Figge
Type of Determination: Closing
Date of Filing of Appeal Papers: February 22, 1995

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by March 9, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

February 22, 1995
Filing of Appeal letter
February 24, 1995
Commission Notice and Order of Filing of Appeal
March 20, 1995
Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]
March 29, 1995
Petitioners' Participant Statements or Initial Brief [see 39 CFR 3001.115 (a) and (b)]
April 18, 1995
Postal Service's Answering Brief [see 39 CFR 3001.115(c)]
May 3, 1995
Petitioners' Reply Brief should Petitioners choose to file one [see 39 CFR 3001.115(d)]
May 10, 1995
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]
June 22, 1995
Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 95–5116 Filed 3–1–95; 8:45 am]

BILLING CODE 7710–FW–P

Notice of Commission Visit

February 23, 1995.

Notice is hereby given that on February 14, 1995, members of the Commission, certain advisory staff personnel and the OCA visited the offices and processing facilities of the Baltimore Sun in Baltimore, Maryland. A report of the visit is on file in the Commission's Docket Room. For further information contact Margaret P. Crenshaw, Secretary of the Commission, at 202–789–6840.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–5117 Filed 3–1–95; 8:45 am]

BILLING CODE 7710–FW–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as Amended by Public Law 99–591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collections Under Review by the Office of Management and Budget (OMB)..

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Public Law 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; Telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (BR 6B), Chattanooga, TN 37402–2801; (615) 751–2523.

Type of Request: Regular submission.

Title of Information Collection: Customer Input Card for TVA Recreation Areas.

Type of Affected Public: Individual or households.

Type of Affected Public: Individuals of households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 1,000.

Estimated Total Annual Burden Hours: 50.

Estimated Average Burden Hours Per Response: .05.

Need For and Use of Information: This information collection asks visitors to selected TVA public use areas to provide feedback on the condition of the facilities they used and the services they received. The information collected will be used to evaluate current maintenance, facility, and service practice and policies and to identify new opportunities for improvements.

William S. Moore,

Senior Manager, Administrative and Transportation Services.

[FR Doc. 95–5091 Filed 3–1–95; 8:45 am]

BILLING CODE 8120–08–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting locations.

SUMMARY: This is to announce the meeting location for Region 2 and a change of meeting location for Region 1 of the Series 20 Regional Advisory Board meetings scheduled from March 2 through April 7 as published in the **Federal Register**, February 22, 1995, page 9885.

DATES: The meetings are scheduled as follows:

1. March 22, 9 a.m. to 12:30 p.m., Charlotte, North Carolina, Region 2 Advisory Board.

2. March 24, 9 a.m. to 12:30 p.m., Boston, Massachusetts, Region 1 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Charlotte, North Carolina—Charlotte Mecklenburg Government Center, 600 East 4th Street.

2. Boston, Massachusetts—Sheraton Boston, 39 Dalton Street.

FOR FURTHER INFORMATION CONTACT:

Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

Dated: February 27, 1995.

Jill Nevius,

Committee Management Officer.

[FR Doc. 95–5159 Filed 3–1–95; 8:45 am]

BILLING CODE 2221–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications of Hemisphere International Airlines, Inc. for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 95–2–49); Dockets 49791 and 49792.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Hemisphere International Airlines, Inc., fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of property and mail.

DATES: Persons wishing to file objections should do so no later than March 13, 1995.

ADDRESSES: Objections and answers to objections should be filed in Dockets 49791 and 49792 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 366–9721.

Dated: February 24, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–5099 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 95–019]

National Offshore Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various offshore safety related issues. The meeting will be open to the public.

DATES: The meeting will be held on Friday, March 31, 1995, from 1:00 p.m. to 4:00 p.m. Written material should be submitted not later than March 17, 1995.

ADDRESSES: The meeting will be held in Room 4436/4440, of the NASSIF Building, 400 7th Street, S.W., Washington, D.C. Written material should be submitted to CDR Adan Guerrero, Executive Director, Commandant (G–MVI–4), U.S. Coast Guard, 2100 Second Street S.W., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: CDR Adan Guerrero, Executive Director, National Offshore Safety Advisory Committee (NOSAC), Room 1405, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593–0001, telephone (202) 267–2307.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 *et seq.* The agenda will include discussion of the following topics:

(1) Proposed Changes to Committee Working Processes;

(2) Clean Air Act of 1990;

(3) ISM Code Implementation for the Offshore Industry;

(4) Legislative Proposal for Large OSVs;

(5) Revision of Subchapter ''L'' on OSVs and Liftboats;

(6) Revision to 33 CFR Subchapter ''N'', OCS Regulations;

(7) IMO Items Affecting the Offshore Industry; and

(8) Draft Changes to Marine Investigation Regulations—Personnel Actions (46 CFR, Part 5).

Attendance at the meeting is open to the public. With advance notice, and at the discretion of the Chairman, members of the public may make oral presentations at the meeting. Persons wishing to make oral presentations should notify the Executive Director, listed above under **ADDRESSES**, no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written materials should be submitted to the Executive Director not later than March 17, 1995.

Dated: February 17, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–5169 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: Winnebago, Outagamie and Waupaca Counties, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway improvement project in Winnebago, Outagamie and Waupaca Counties, in Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Madrzak, Statewide Projects Engineer, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905; Telephone (608) 264–5968.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation (WISDOT), is currently preparing an environmental impact statement for the construction of a four-lane facility for Highway 10. The project begins at Highway ''U'' west of the Village of Fremont and extends easterly for 38.6 km (24.7 mi) to Highway 45 (USH 10).

The improvement of USH 10, which is a two-lane rural highway, is considered necessary to reduce heavy congestion and the accident potential along the existing route.

Planning, environmental and engineering studies are underway to develop transportation alternatives. The EIS will assess the need, location, and environmental impacts of alternatives including: (1) No Build—This alternative assumes the continued use of existing facilities with the maintenance necessary to ensure their use; (2) Upgrade the Existing Facility—This alternative would improve the safety and traffic handling capability of the existing route; and (3) Construction on New Alignment—This alternative would involve constructing four lanes on new location. The proposed project would consist of adding two lanes to the existing facility, four lanes on new location or a combination of add lanes and new location.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. A series of public meetings will be held in the project corridor throughout the data gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the hearing. As part of the scoping process, coordination activities have begun. Scoping meetings will continue to be held on an individual or group meeting basis. Agency coordination will be accomplished during these meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Coordination. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: February 21, 1995.

Richard C. Madrzak,

Statewide Projects Engineer, Madison, Wisconsin.

[FR Doc. 95–5092 Filed 3–1–95; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

United States Customs Service

Notice of Issuance of Final Determination Concerning Auto/Marine Adapters

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that Customs has issued a final determination concerning the country of origin of certain auto/marine adapters which are being offered to the U.S. Federal Bureau of Investigation (''FBI'') in a procurement designated under FBI Solicitation No. 6178. The final determination found that based upon the facts presented, the country of origin of auto/marine adapters is the U.S. (Scenario I) and the Netherlands (Scenario II).

DATES: The final determination was issued on February 23, 1995. Any party-at-interest, as defined at 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of March 2, 1995.

ADDRESSES: Copies of the nonconfidential portions of this final determination may be obtained by writing or calling the Legal Reference Staff, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229; (202) 482–6906.

FOR FURTHER INFORMATION CONTACT: Anthony A. Tonucci, Attorney-Advisor, Office of Regulations and Rulings, (202) 482–7073.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on February 23, 1995, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), Customs issued a final determination concerning the country of origin of certain auto/marine adapters which are being offered to the FBI in a procurement designated under FBI Solicitation No. 6178. The U.S. Customs ruling number is HQ 735346. This final determination was issued at the request of one of the offerors under procedures set forth at 19 CFR 177 subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18).

The final determination concluded that based upon the facts presented: (1) Taiwanese DC to DC converters are substantially transformed in the U.S. (Scenario I) and the Netherlands (Scenario II) as a result of being further processed and assembled with other components into auto/marine adapters; (2) Taiwanese DC to DC converters and the other components which are of U.S. origin also are substantially transformed in the Netherlands as a result of being further processed and assembled into auto/marine adapters. Accordingly, the country of origin of the auto/marine adapters is the U.S. (Scenario I) and the Netherlands (Scenario II).

This document gives notice pursuant to section 177.29, Customs Regulations, (19 CFR 177.29), of that final determination. Any party-at-interest, as defined at 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of (date of publication in the **Federal Register**).

Dated: February 23, 1995.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 95–5182 Filed 3–1–95; 8:45 am]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 41
Thursday, March 2, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, April 4, 1995.

PLACE: 2033 K St., NW., Washington, DC., Lower Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Amendments to Part 4, Commodity Pool Operator and Commodity Trading Advisor Disclosure Rules.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–5316 Filed 2–28–95; 3:32 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, March 28, 1995.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–5317 Filed 2–28–95; 3:32 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 28, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–5318 Filed 2–28–95; 3:32 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 21, 1995.

PLACE: 2033 K Street NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–5319 Filed 2–28–95; 3:32 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 14, 1995.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–5320 Filed 2–28–95; 3:32 pm]

BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 7, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, March 8, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor.)

STATUS: This Oral Hearing Will Be Open to the Public.

MATTER TO BE DISCUSSED: Public Hearing on Communications Disclaimer Requirements.

DATE AND TIME: Thursday, March 9, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
MCFL Rulemaking: Summary of Comments and Draft Final Rules
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95–5294 Filed 2–28–95; 2:48 pm]

BILLING CODE 6715–01–M

Corrections

Federal Register

Vol. 60, No. 41

Thursday, March 2, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029]

Yankee Atomic Electric Co.; Yankee Nuclear Power Station; Order Approving the Decommissioning Plan and Authorizing Decommissioning of Facility

Correction

In notice document 95–4268 beginning on page 9870 in the issue of Wednesday, February 22, 1995, make the following corrections:

1. On page 9870, in the third column, in the second paragraph, in the third line from the bottom, the word ''plant'' should read ''plan''.

2. On page 9871, in the second column, in the first paragraph, in the quoted paragraph, in the first line, ''With the respect'' should read ''With respect''.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35334; File No. SR-NASD-94-64]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Numbering and Terminology of Rules and Correction of Cross References

Correction

In notice document 95–3496 appearing on page 8262 in the issue of Monday, February 13, 1995 make the following corrections:

On page 8262, in the first column, in the heading, the File No. is corrected to read as set forth above; and in the second column, the signature line was inadvertently omitted and should appear as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35370; File No. SR-NASD-95-05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Time Period for the Exchange of Documents Before an Arbitration Hearing

Correction

In notice document 95–4086 beginning on page 9708, in the issue of Tuesday, February 21, 1995, in the third column, the agency release number should read as printed above.

BILLING CODE 1505–01–D

federal register

Thursday
March 2, 1995

Part II

Environmental Protection Agency

40 CFR Parts 148 et al.

Land Disposal Restrictions—Phase III: Decharacterized Wastewaters, Carbamate and Organobromine Wastes, and Spent Potliners; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 266, 268 and 271

[EPA #530–2–95–002, 6 FRL 5160–7]

RIN 2050–AD38

Land Disposal Restrictions—Phase III: Decharacterized Wastewaters, Carbamate and Organobromine Wastes, and Spent Potliners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today, the Agency is proposing treatment standards for certain hazardous wastes—namely, wastes from the production of carbamate pesticides, organobromine flame-retardants, and aluminum—under its Land Disposal Restrictions (LDR) program. The purpose of the LDR program, authorized by the Resource Conservation and Recovery Act (RCRA), is to minimize short and long-term threats to human health and the environment from exposure to hazardous chemical constituents. The treatment standards for these wastes will minimize threats from exposure to hazardous constituents which may potentially leach from landfills to groundwater.

The Agency is also proposing to revise the treatment standards for other wastes which are hazardous because they display the characteristic of ignitability, corrosivity, reactivity, or toxicity. These wastes, known as ''characteristic'' hazardous wastes, are sometimes treated in lagoons which are regulated under the Clean Water Act, and sometimes injected into deepwells which are regulated under the Safe Drinking Water Act. Currently, these wastes are no longer regulated under RCRA once the characteristic property is removed. Today's revised treatment standards require treatment, not only to remove the characteristic, but also to treat any underlying hazardous constituents which may be present in the wastes, even though they are not what causes the characteristic property (i.e., a corrosive waste could have underlying hazardous constituents that, although not corrosive, are nevertheless toxic to human health). Therefore, these revised treatment standards will minimize threats from exposure to hazardous constituents which may potentially migrate from these lagoons or wells.

Finally, EPA is proposing today to forbid the use of hazardous wastes to fill in holes in the ground. EPA proposes that this practice is illegal disposal of hazardous wastes. EPA is also proposing to add to the regulations an existing policy which states that hazardous wastes which are predominantly metal should not be burned.

DATES: Comments on this proposed rule must be submitted by May 1, 1995.

ADDRESSES: The public must send an original and two copies (and a voluntary copy on computer diskette) of their comments to: RCRA Information Center (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the docket number F–95–PH3P–FFFFF on your comments. The official record for the proposed rulemaking is located in the EPA RCRA Docket, U.S. Environmental Protection Agency, Room 2616, 401 M Street, SW., Washington, DC 20460. The RCRA Docket is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page. The mailing address is EPA RCRA Docket (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. For additional information on submitting computer diskettes please see the heading ''Paperless Office Effort'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For general information on the LDR program, contact the RCRA Hotline at 800–424–9346 (toll-free) or 703–412–9810 locally. For information on today's proposed rule, contact Peggy Vyas in the Office of Solid Waste, phone 703–308–8594. For specific information on the treatment standards for carbamates and/or organobromine wastes, contact Shaun McGarvey at 703–308–8603; for specific information on the treatment standards for K088 wastes, contact Mary Cunningham at 703–308–8453; for specific information on the Universal Treatment Standards, contact Lisa Jones at 703–308–8451. For information on the capacity analyses, contact Les Otte at 703–308–8440. For information on the regulatory impact analyses, contact Linda Martin at 202–260–2791.

SUPPLEMENTARY INFORMATION:

Paperless Office Effort

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Rather, EPA is experimenting with this procedure as an attempt to expedite our internal review and response to comments. This expedited procedure is in conjunction with the Agency ''Paperless Office Effort'' campaign. For further information on the submission of diskettes, contact the Waste Treatment Branch at 703–308–8434.

Glossary of Acronyms

BAT—Best Available Technology
BDAT—Best Demonstrated Available Technology
BIFs—Boilers and Industrial Furnaces
CAA—Clean Air Act
CWA—Clean Water Act
EP—Extraction Procedure
HON—Hazardous Organic NESHAPs
HSWA—Hazardous and Solid Waste Amendments
HWIR—Hazardous Waste Identification Rule
ICR—Ignitable, Corrosive, and Reactive wastes, or, Information Collection Request (in section XI.D.)
ICRT—Ignitable, Corrosive, Reactive, and TC Wastes
LDR—Land Disposal Restrictions
NESHAPs—National Emission Standards for Hazardous Air Pollutants
NPDES—National Pollutant Discharge Elimination System
POTW—Publically-Owned Treatment Works
PSES—Pretreatment Standards for Existing Sources
PSNS—Pretreatment Standards for New Sources
RCRA—Resource Conservation and Recovery Act
RIA—Regulatory Impact Analysis
SDWA—Safe Drinking Water Act
TC—Toxicity Characteristic
TCLP—Toxicity Characteristic Leaching Procedure
TRI—Toxic Release Inventory
UIC—Underground Injection Control
UTS—Universal Treatment Standards

Outline

I. Background

A. Summary of the Statutory Requirements of the 1984 Hazardous and Solid Waste Amendments, and Requirements of the 1993 Proposed Consent Decree With the Environmental Defense Fund

The Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, largely prohibit the land disposal of untreated hazardous wastes. Once a hazardous waste is prohibited from land disposal, the statute provides only two options for legal land disposal: Meet the treatment standard for the waste prior to land disposal, or dispose of the waste in a land disposal unit that has been found to satisfy the statutory no migration test. A no migration unit is one from which there will be no migration of hazardous constituents for as long as the waste remains hazardous. RCRA sections 3004 (d), (e), (g)(5).

EPA was required to promulgate land disposal prohibitions and treatment standards by May 8, 1990 for all wastes that were either listed or identified as hazardous at the time of the 1984 amendments (RCRA sections 3004(d), (e), and (g)), a task EPA completed within the statutory timeframes. EPA was also required to promulgate prohibitions and treatment standards for wastes identified or listed as hazardous after the date of the 1984 amendments within six months after the listing or identification takes effect (RCRA section 3004(g)(4)).

The Agency did not meet this latter statutory deadline for all of the wastes identified or listed after the 1984 amendments. As a result, a suit was filed by the Environmental Defense Fund (EDF). EPA and EDF signed a consent decree that establishes a schedule for adopting prohibitions and treatment standards for newly identified and listed wastes. (*EDF* v. *Reilly*, Cir. No. 89–0598, D.D.C.) This proposed consent decree was modified as a result of the court decision on the Third Third final rule (*Chemical Waste Management* v. *EPA*, 976 F. 2d 2 (D.C. Cir. 1992), cert. denied 113 S. Ct. 1961 (1993); hereafter referred to as *CWM* v. *EPA*, or the *Third Third opinion*). Today's proposed rule fulfills several provisions of the proposed consent decree. The rule proposes land disposal restrictions for characteristic hazardous wastes managed in CWA and CWA-equivalent treatment systems, and injected into underground injection control (UIC) Class I nonhazardous injection wells regulated under the SDWA. Today's rule also proposes treatment standards for carbamate and organobromine wastes. The rule also proposes treatment standards for newly listed spent aluminum potliners (K088), which according to the proposed consent decree need not be proposed until June 30, 1995.

B. Summary of the D.C. Circuit's Opinion on the Third Third Standards for Ignitable, Corrosive, Reactive, and Toxic Characteristic Wastes and EPA's Implementation of the Opinion to Date

Characteristic hazardous wastes that are treated or diluted such that they no longer exhibit the hazardous characteristic are no longer subject to RCRA Subtitle C management standards, and thus may be discharged into units that are not subject to the stringent RCRA Subtitle C standards, such as UIC wells. In *CWM* v. *EPA*, 976 F.2d 2 (D.C. Cir. 1992), the U.S. Court of Appeals for the D.C. Circuit interpreted RCRA section 3004(m) as requiring treatment of underlying hazardous constituents in decharacterized hazardous wastes so as to minimize threats to human health and the environment. As yet, the Agency has not set minimize threat levels under RCRA and therefore must require treatment.

However, the Agency has a process to set levels under the Hazardous Waste Identification Rule (HWIR). If risk-based minimize threat levels are established under HWIR, these levels would implement section 3004(m) and consequently supersede the technology-based treatment standards presently utilized. See HWTC III, 886 F. 2d at 362–63. Wastes treated to these levels also would not be classified as hazardous wastes and consequently could be disposed in units not subject to subtitle C standards (e.g., landfills not receiving federal permits.) EPA has lodged a proposed consent decree with the U.S. District Court to propose the HWIR levels not later than August 15, 1995, and finalize by December 15, 1996. As was previously mentioned, the Agency entered into a consent decree setting out a schedule for fulfilling the court's mandate for the wastes addressed in today's rule. This consent decree requires the Agency to set treatment standards for these wastes before the HWIR rulemaking.

That being said, the risks addressed by this rule, particularly UIC wells, are very small relative to the risks presented by other environmental conditions or situations. In a time of limited resources, common sense dictates that we deal with higher risk activities first, a principle on which EPA, members of the regulated community, and the public can all agree.

Nevertheless, the Agency is required to set treatment standards for these relatively low risk wastes and disposal practices during the next two years, although there are other actions and projects with which the Agency could provide greater protection of human health and the environment. At the same time, however, EPA has sought to exercise the full extent of its authority under current law to develop innovative options designed to significantly lower the potential cost of these controls while ensuring protectiveness, such as giving credit for up-stream reductions in hazardous constituents, and crafting limited exemptions for wastewaters containing *de minimis* amounts of hazardous constituents. Through the public comment process and further consultation with stakeholders, EPA expects to obtain guidance for any future action we may take.

A detailed discussion of the Agency's interpretation of the opinion in *CWM* v. *EPA* is provided in the next section. For background information on the relevant portions of the Third Third final rule (i.e., the treatment standards promulgated for hazardous wastes exhibiting the characteristics of ignitability, corrosivity, reactivity, or Extraction Procedure (EP) toxicity), see 55 FR 22653–22659 (June 1, 1990).

The Agency's immediate response following issuance of the opinion can be found in the January 19, 1993 Supplemental Information Report to the Notice of Data Availability (58 FR 4972). This report sets out the Agency's options for complying with the court's decision. The options discussed in this report applied to reactive, as well as ignitable and corrosive wastes, since EPA knows of no inherent differences among these wastes with respect to propensity to contain hazardous constituents.

1. Summary of the Third Third Standards

On May 8, 1990, EPA promulgated regulations addressing the last of five congressionally-mandated prohibitions on land disposal of hazardous wastes, which was the third one-third of the schedule of restricted hazardous wastes, referred to as the Third Third. Among other things, the Third Third final rule promulgated treatment standards and prohibition effective dates for hazardous wastes that exhibited one or more of the following characteristics: ignitability, corrosivity, reactivity, or EP toxicity (40 CFR 261.21–261.24). The Third Third rule established treatment standards for the characteristic wastes in one of four forms: (1) a concentration level equal to, or greater than, the characteristic level; (2) a concentration level less than the characteristic level; (3) a specified treatment technology (e.g., for ignitable wastes containing high levels of total organic carbon); and (4) a treatment standard of ''deactivation'' which allowed the use of any technology, including dilution, to remove the characteristic.

The Agency also evaluated the applicability of certain provisions of the land disposal restrictions' framework with respect to characteristic wastes, including wastes regulated under the National Pollutant Discharge Elimination System (NPDES) or pretreatment programs under sections 402 and 307(b) of the CWA and the SDWA UIC programs to try to ensure successful integration of these programs with the regulations being promulgated under RCRA. See generally 55 FR 22653–59 (June 1, 1990). Specifically, the Agency considered the appropriateness of the dilution prohibition for each of the characteristic waste streams, and the applicability of treatment standards expressed as specified methods.

The Agency found, generally, that mixing waste streams to eliminate certain characteristics was appropriate and permissible for corrosive wastewaters, or in some cases, reactive or ignitable wastewaters. Furthermore, EPA stated that the dilution prohibition did not normally apply to characteristic wastewaters that are managed in treatment trains including surface impoundments whose ultimate

discharge is regulated under the pretreatment and NPDES programs under sections 307(b) and 402 of the CWA, or in Class I underground injection well systems regulated under the SDWA. The Agency stated that the treatment requirements and associated dilution rules under the CWA are generally consistent with the dilution rules under RCRA, and that the Agency should rely on the existing CWA provisions. The Agency also singled out certain particularly toxic wastewaters to which the dilution prohibition still applies notwithstanding management in CWA systems. 40 CFR 268.3(b). Similarly, EPA stated that a regulatory program had been established under the SDWA to prevent underground injection which endangers drinking water sources. Class I deep wells inject below the lowermost geologic formation containing an underground drinking water source and are subject to federal location, construction, and operation requirements. The Agency stated that application of the dilution rules to these wastes would not provide further protection to human health and the environment, and that disposal of these wastes by underground injection at the characteristic levels was as sound a practice as treating them.

2. The Court's Decision

On September 25, 1992, the United States Court of Appeals for the District of Columbia Circuit ruled on the various petitions for review. The principal holdings of the case with respect to characteristic wastes are that: (1) EPA may require treatment under RCRA section 3004(m) to more stringent levels than those at which wastes are identified as hazardous, 976 F. 2d at 12–14; (2) section 3004(m) requires that treatment standards address both short-term and long-term potential harms posed by hazardous wastes, and consequently must result in destruction and removal of hazardous constituents as well as removal of the characteristic property, *id*. at 16, 17, 23. As a consequence, dilution is permissible as an exclusive method of treatment only for those characteristic wastes that do not contain hazardous constituents ''in sufficient concentrations to pose a threat to human health or the environment'' (i.e., the minimize threat level in section 3004(m)), *id*. at 16; and (3) situations where characteristic hazardous wastes are diluted, lose their characteristic(s) and are then managed in centralized wastewater management land disposal units (i.e., subtitle D surface impoundments or Class I nonhazardous injection wells) are legal only if it can be demonstrated that hazardous constituents are reduced or destroyed to the same extent they would be pursuant to otherwise applicable RCRA treatment standards, *id*. at 7.

As a consequence of these holdings, the court held that the deactivation standard for ignitable and corrosive wastes did not fully comply with RCRA section 3004(m). This was because that standard could be achieved by dilution, and dilution fails to destroy or remove the hazardous constituents that can be present in the wastes. *Id*. (A more detailed analysis of the D.C. Circuit's *Third Third opinion* is found in section II of this notice.)

3. Options Prepared for the Notice of Data Availability

On January 19, 1993, EPA published a Notice of Data Availability to solicit as many comments as possible on all issues in the court opinion (58 FR 4972). The Agency prepared a Supplemental Information Report that was distributed to the public that set out the Agency's options for complying with the court's decision. The options discussed in this report applied to reactive, as well as ignitable and corrosive wastes, since EPA knows of no inherent differences among these wastes with respect to propensity to contain hazardous constituents.

The report included options for establishing treatment standards for the underlying hazardous constituents in ignitable, corrosive and reactive (ICR) wastes that would have to be met prior to land disposal (including disposal in UIC wells). (It should be noted that the Agency also believes that underlying hazardous constituents can be present in wastes displaying the toxicity characteristic.) Two approaches were set out, along with the Agency's views on possible advantages and disadvantages of each.

Under approach one, the Agency discussed the possibility of adopting concentration limits for underlying hazardous constituents. Under approach two, the Agency discussed specifying required treatment technologies. The Agency discussed how these possible approaches might apply to ICR wastes that are not managed in CWA centralized wastewater treatment systems. Furthermore, the applicability of LDR treatment standards to CWA facilities, and possible implementation scenarios under the CWA, were also discussed.

The Agency also discussed options for how to determine the equivalency of CWA treatment systems with treatment under RCRA. The ''equivalency'' discussion included possible options for addressing air emissions, leaks, and sludges from CWA treatment surface impoundments. Also mentioned were other Agency efforts such as the Hazardous Organic NESHAPs (HON) (59 FR 19402, April 22, 1994) developed by the Office of Air. These options will be developed in a later LDR rulemaking, but are discussed here and elsewhere in this preamble in order to inform and gather comments from all potentially affected persons.

Approximately 60 public comments were received in response to the Notice of Data Availability. Those that pertain to establishing treatment standards for characteristic waste managed in CWA, CWA-equivalent, and Class I nonhazardous UIC wells have been considered as this proposed rule was developed.

4. Contents of the Interim Final Rule

EPA issued an interim final rule on May 24, 1993 (58 FR 29860) to address those treatment standards that were vacated (as opposed to remanded) by the court. Today's rule proposes treatment standards for some of the portions of the rule that were remanded. The distinction between vacated and remanded rules is that vacated rules are no longer in effect after the court's mandate issues, whereas remanded rules remain in force until the Agency acts to replace them.

The Agency's opinion at that time was that the rules dealing with centralized wastewater management involving land disposal (§§ 268.1(c)(3) and 268.3(b)) were remanded, not vacated. (See 976 F. 2d at 7, 19–26 where these rules are discussed and not expressly vacated.) This means that the only wastes to which the interim final rule applied were those ignitable and corrosive wastes for which the treatment standard was deactivation (since the deactivation standard for these wastes was vacated) and which were not managed in the types of centralized wastewater management systems covered by the remanded rules cited above.

The Agency thus promulgated revised treatment standards for certain ignitable and corrosive wastes that are managed in systems other than those managed: (1) In centralized wastewater treatment systems subject to the CWA or in Class I underground injection wells subject to the SDWA UIC program; or, (2) by a zero discharger with a wastewater treatment system equivalent to that utilized by CWA dischargers prior to land disposal. The treatment standards retained the requirement of deactivation to remove the hazardous characteristic (see DEACT in Table 1, 40 CFR 268.42); however, the rule also set numerical treatment standards for the underlying hazardous

constituents that could reasonably be expected to be present in the wastes. EPA also promulgated alternative treatment standards of incineration, fuel substitution, and recovery of organics for ignitable wastes. In addition, EPA established new precautionary measures to prevent emissions of volatile organic constituents or violent reactions during the process of diluting ignitable and reactive wastes.

5. Regulation of Toxicity Characteristic (TC) Wastes in the LDR Phase II Rule

On March 29, 1990, EPA promulgated a rule that identified organic constituents (in addition to existing EP metals and pesticide constituents) and levels at which a waste is considered hazardous based on the characteristic of toxicity (55 FR 11798). Because these wastes were identified as hazardous after the enactment date of HSWA in 1984, they were ''newly identified wastes'' for purposes of the LDR program. Included are wastes identified with the codes D012 through D043 based on the Toxicity Characteristic Leaching Procedure (TCLP), i.e., TC wastes. In the LDR Phase II final rule (59 FR 47982, September 19, 1994), EPA established treatment standards for each of these constituents if they are managed in systems other than those regulated under the CWA, those engaging in CWA-equivalent treatment prior to land disposal, and those injected into Class I deep injection wells regulated under the SDWA. In addition, because wastes exhibiting the TC can contain treatable levels of other hazardous constituents, EPA established treatment standards for the underlying hazardous constituents reasonably expected to be present in the waste. These rules are consistent with the Third Third opinion and adopt the same approach as the May 24, 1993 interim final rule.

Furthermore, as part of a regulatory response to implement the court's ruling, EPA required in the LDR Phase II final rule that hazardous constituents in two types of characteristic wastes—high total organic carbon (TOC) ignitable liquids (D001) and halogenated pesticide wastes that exhibit the toxicity characteristic (D012–D017)—be fully treated before those wastes are disposed into any Class I nonhazardous injection well that does not have a no-migration variance. See 59 FR at 48013. Therefore, these wastes can no longer be legally diluted to remove the characteristic and then be injected into Class I nonhazardous injection wells.

6. Requirements of 1993 Settlement Agreement With CWM, et al.

This proposed rule continues to fulfill the requirements of the settlement agreement with the petitioners in CWM v. EPA. Today's rule proposes concentration-based treatment standards for the underlying hazardous constituents reasonably expected to be present in ignitable, corrosive, reactive and TC wastes managed in CWA and CWA-equivalent treatment systems, and injected into UIC Class I nonhazardous injection wells regulated under the SDWA. The settlement agreement calls for developing standards for ignitable and corrosive wastes only; however, the Agency believes that underlying hazardous constituents may also be present in reactive and toxic wastes, and is therefore proposing regulations for these wastestreams as well.

Today's rule also complies with the settlement agreement by describing and discussing the following option for implementing the opinion: the identification of underlying hazardous constituents that are not amenable to treatment in certain CWA centralized treatment systems, and the subsequent prohibition on the introduction of such nonamenable wastes into such systems.

II. EPA's Interpretation of the Third Third Opinion

EPA's action in this rulemaking is taken to implement key portions of the court's mandate in *CWM* v. *EPA*, the opinion vacating and remanding (among other things) EPA's rules allowing treatment standards for hazardous constituents in characteristic hazardous wastes to be achieved solely by diluting these constituents. EPA's initial view of the opinion is that it interprets the statute to require that hazardous constituents present in hazardous wastes at concentrations exceeding a minimize threat level to be treated so that they are destroyed, removed, or immobilized before the waste is land disposed. Some commenters to the May 24, 1993 interim final rule and the LDR Phase II proposed rule, however, have argued that dilution nevertheless can be utilized as the sole means of treating characteristic hazardous wastes, if dilution reduces hazardous constituent concentration levels to levels reflecting either performance of Best Demonstrated Available Technology (BDAT) or minimize threat levels. This argument is based largely on language in the court's opinion that treatment of hazardous constituents is required if, after dilution, hazardous constituents are present in concentrations sufficient to pose a threat to human health and the environment. See, e.g., 976 F. 2d at 7, 17, 18, 19-20, 23. Some commenters have added the further argument that section 3004(m) requires that treatment ''substantially reduce the toxicity of the waste'', which is accomplished when dilution lowers hazardous constituents to BDAT levels.

If these arguments were accepted, it would mean that characteristic wastes could be disposed after dilution, without further treatment of hazardous constituents, provided sufficient dilution had occurred. Although this argument has been made chiefly by representatives of facilities engaged in underground injection, the argument is not limited to the injection context, or even to the context of characteristic wastes. Thus, if EPA accepted this argument, it would mean that any hazardous waste could be land disposed into any type of land disposal unit provided the waste was sufficiently diluted before land disposal, notwithstanding that the same volume of hazardous constituents as in the initial waste would be land disposed.

EPA does not accept this interpretation of the court's opinion or of the statute. In the Agency's view, the statute and opinion are best interpreted by requiring hazardous constituents in hazardous wastes to be treated so that hazardous constituents are destroyed, removed, or immobilized before land disposal. The Agency's basis for this conclusion is set out below.

A. Statutory Language

Section 3004(m)(1) requires EPA to establish, as a precondition to land disposal of hazardous waste, treatment standards ''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.'' Although the first prong of the test—''substantially diminish the toxicity of the waste''—conceivably is satisfied by dilution,[1] the treatment must not only diminish the waste's toxicity but also do so in a manner that minimizes short-term and long-term harms to human health and the environment.[2]

[1] If, for example, a wastewater starts out with cadmium concentrations exceeding 100 mg/l and is diluted so that cadmium is present at concentrations below the MCL of 0.1 mg/l, the toxicity of the waste has been diminished.

[2] ''Treatment is required not only for purposes of protecting against the short-term or acute risks associated with the land disposal of hazardous wastes, but more importantly focuses on the long-term hazards associated with migration of the wastes and subsequent contamination of ground or surface water.'' 130 Cong. Rec. S9178 (July 25,

Furthermore, although EPA has maintained that ''minimization'' of threats does not necessarily require elimination of all possible hazards (see, e.g., 55 FR 6641 and n.1 (February 26, 1990)), the phrase certainly requires something more substantial than merely diluting hazardous constituents.

Allowing the waste's toxicity to be diminished solely by dilution also is at odds with RCRA's enumerated goals and policies. Congress prohibited land disposal of hazardous waste because of ''long-term uncertainties associated with land disposal'',[3] and persistence, toxicity, mobility, and propensity to bioaccumulate'' of hazardous constituents in the waste. Sections 3004 (d)(1), (e)(1), (g)(5); *Hazardous Waste Treatment Council* v. *EPA*, 886 F. 2d 1355, 1362–63 (D.C. Cir. 1989), cert. denied 111 S. Ct. 139 (1990) (upholding technology-based treatment standards due to the uncertainties inherent in determining when land disposal is protective). Land disposal of untreated hazardous waste is only allowed in ''protective'' land disposal units, defined as meaning units from which no hazardous constituents will migrate for as long as the waste remains hazardous—to be demonstrated ''to a reasonable degree of certainty''. Sections 3004 (d)(1), (e)(1), (g)(5). Allowing dilution of hazardous constituents fails to take account of these long-term uncertainties, propensity to bioaccumulate, and the like. As a result, it arguably fails to minimize long-term threats posed by the wastes.

Another provision indicating that Congress did not intend for dilution to be a means of treating toxic hazardous wastes is section 3004(h). Congress, in sections 3004(h) (2) and (3), authorized EPA to postpone LDR prohibition effective dates for up to two years (renewable for up to two additional years for individual facilities) if there is inadequate available treatment capacity for a particular waste. This provision would not have been necessary if dilution could be used as a means of treatment, since it would never take two years (or longer) for a facility to develop the means (i.e. adding dirt or water) of diluting wastes to meet a treatment standard.

1984) (Statement of Sen. Chaffee introducing the amendment that became section 3004(m))

[3] See also section 1002(b)(7) which states that ''certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes, and to avoid substantial risk to human health and the environment, reliance on land disposal should be minimized or eliminated * * *.''.

B. Legislative History

The legislative history states that dilution is not to be allowed as a means of treating hazardous constituents. See S. Rep. No. 284, 98th Cong. 2d sess. 17, which states that ''(t)he dilution of wastes by the addition of other hazardous wastes or any other materials during waste handling, transportation, treatment, or storage is not an acceptable method of treatment to reduce the concentration of hazardous constituents. Only dilution which occurs as a normal part of the process that results in the waste can be taken into account in establishing concentration levels.'' [4] The House Report is similarly explicit.[5] The Conference Report similarly states that ''the Conferees intend that through the vigorous implementation of the objectives of this Act, land disposal will be eliminated for many wastes and minimized for all others, and that advanced treatment, recycling, incineration and other hazardous waste control technologies should replace land disposal.'' H. Rep. No. 1133, 98th Cong. 2d sess. 80.

Other legislative history indicates that Congress intended for EPA to adopt technology-based treatment standards: ''The requisite levels o(r) methods of treatment established by the Agency should be the best that has (sic) been demonstrated to be achievable. This does not require a BAT-type process * * *. The intent here is to require utilization of available technology in lieu of continued land disposal without prior treatment.'' 130 Cong. Rec. S 9178 (daily ed. July 25, 1984) (statement of Sen. Chaffee introducing the amendment that became section 3004(m)); see also 130 Cong. Rec. 20803 (1984 (statement of Sen. Moynihan on section 3004(m)): ''The requisite levels o(r) methods of treatment established by the Agency should be the best that has been demonstrated to be achievable.'' The legislative history also indicates that Congress intended treatment to result in destruction of total cyanide and organic hazardous constituents. 130 Cong. Rec. S 9178 (statement of Sen. Chaffee). Dilution of hazardous constituents, of course, is not BDAT, and does not destroy or remove hazardous constituents.

The legislative history consequently strongly supports reading section 3004(m) as not allowing dilution of hazardous constituents.

C. Judicial Opinions

The D.C. Circuit's position in the Third Third opinion is potentially contradictory on this point. At points in the opinion, as noted above, this court states that dilution could satisfy section 3004(m) requirements, perhaps even for hazardous constituents. Elsewhere, however, the court unequivocally stated that dilution does not satisfy section 3004(m) because hazardous constituents are not destroyed, removed, or immobilized:

> We wish to make explicit the impact of our holding * * *. First, where dilution to remove the characteristic meets the definition of treatment under section 3004(m)(1), nothing more is required. Second, where dilution removes the characteristic but does not ''treat'' the waste by reducing the toxicity of hazardous constituents, then the decharacterized waste may be placed in a surface impoundment if and only if the resulting CWA treatment fully complies with RCRA section 3004(m)(l).

In other words, the material that comes out of CWA treatment facilities that employ surface impoundments must remove the hazardous constituents to the same extent that any other treatment facility that complies with RCRA does. 976 F. 2d at 23. Dilution thus cannot be used as the sole means of treating hazardous constituents because it does not remove hazardous constituents from the waste. The court made this explicit in a footnote quantifying the above-quoted passage:

> To illustrate RCRA's focus on treatment of the hazardous constituents in a waste, consider a waste stream hazardous by characteristic for cadmium. Both the

[4] The final sentence undoubtedly refers to situations where dilution occurs as part of the manufacturing process that generates the waste (see House Report quoted in the next footnote), not to dilution that occurs once the waste is generated.

This legislative history was to a bill containing the predecessor provision to section 3004(m). The critical provision would have mandated treatment only of hazardous wastes containing significant concentrations of hazardous constituents, and required treatment to levels that would be ''protective'', defined as satisfying the no-migration test. EPA does not view these differences as being critically different from the enacted section 3004(m), and so views the Senate legislative history as being relevant to ascertaining Congressional intent regarding dilution of hazardous constituents as a means of achieving treatment standards.

[5] ''The Committee intends that dilution to a concentration less than the specified thresholds by the addition of other hazardous waste or any other material during waste handling, transportation, treatment, or storage, other than dilution which occurs as a normal part of a manufacturing process, will not be allowed. Such hazardous waste would still be prohibited from land disposal.'' H. Rep. No. 198, 98th Cong. 1st sess. 34; see also *id.* at 38 (''(t)he Administrator may also impose limitations on the use of waste dilution to avoid disposal restrictions. The late (sic) is particularly important where regulations are based on concentrations of hazardous constituents.'')

The House Bill did not expressly require pretreatment before disposal, the scheme of the enacted law, but nevertheless illuminates Congressional intent not to allow dilution as a means of treating hazardous constituents.

characteristic and treatment levels for the hazardous waste are l.0 mg/l. Assume that a stream of 3.0 mg/l daily deposits 1000 liters into a treatment facility. A RCRA treatment facility would remove at least 2000 mg of cadmium from the waste stream. A CWA must do the same—although to do so it will have to process at least three times as much water (because dilution of 1000 liters of 3.0 mg/l to just below the characteristic level will yield just over 3000 liters). Allowing dilution alone would decharacterize the waste, but it would not reduce the total amount of cadmium entering the environment. 976 F 2d at 23 n. 8.

Applying this same standard to injection of decharacterized wastewaters into Class I nonhazardous injection wells, the court stated:

(W)e hold that dilution followed by injection into a deep well is permissible only where dilution itself fully meets section 3004(m)(l) standards or where the waste will subsequently meet section 3004(m)(l) standards. Because deep well injection is permanent land disposal, our holding in effect permits diluted decharacterized wastes to be deep well injected only when dilution meets the section 3004(m)(l) standard or where the deep well secures a no-migration variance. 976 F. 2d at 25. This means that ''any hazardous waste (must) be treated in such a way that hazardous constituents are removed from the waste before it enters the environment.'' 976 F. 2d at 24 (emphasis added). Since injection wells are disposal units and do not engage in treatment, they are incapable of satisfying this standard. Id. at 25.

EPA believes that the thrust of the opinion is to require treatment of hazardous constituents before land disposal. The court's explicit and quantified insistence that treatment standards are to reduce mass loadings of hazardous constituents makes this clear. If the court intended to allow dilution as the sole means of treating hazardous constituents, it would at least have discussed how this squared with statutory language, goals and objectives, and legislative history. Thus, the Agency does not accept the commenters' reading of the opinion. Today's rule consequently proposes that prohibited, decharacterized wastes be treated so that underlying hazardous constituents are removed, destroyed, or immobilized before final disposal into the environment.

III. Integration of BDAT With Other Agency Actions

As EPA makes decisions in this LDR Phase III rule on so-called end-of-pipe equivalence for direct and indirect dischargers treating prohibited, decharacterized wastes in surface impoundments, there are related Agency rulemaking activities warranting mention: The LDR Phase IV rule, which will consider leaks, sludges, and air emissions from surface impoundments; the Hazardous Waste Identification Rule (HWIR), which provides a risk based assessment of when wastes are hazardous, and may result in capping the extent of treatment of some hazardous constituents; the Pulp and Paper and Pharmaceutical Industries effluent limitations guidelines which affect industries using impoundment-based treatment systems to manage decharacterized wastes; and rules for control of hazardous air pollutants issued under the Clean Air Act (CAA), which regulate similar air emissions. These interrelationships are explored below, so that the public can be made aware of how future regulations may impact decisions to be made in response to this rule. Comments and data are requested on the LDR Phase IV options discussed in this part.

A. Phase IV LDRs—Cross-Media Transfer and Equivalency Issues

1. Cross-Media Implications

The LDR Phase IV rule will consider equivalent treatment for centralized wastewater treatment systems with impoundments managing wastewaters that are decharacterized. The principle potentially at issue is the transfer of pollutants from one media to another without being destroyed, removed, or immobilized. Treatment of the wastewaters transfers the pollutants , to groundwater from leaks, or to the air. The transfer of pollutants from one media to another is an Agency-wide concern. The environment is not well served by piecemeal regulation which simply transfers pollutants, nor is industry well-served by piecemeal regulation. The Agency's preference is to look at these situations holistically so that pollutants are not simply transferred, and so that the Agency provides industry with a coordinated understanding of the ''environmental requirements'' for all media. How the Agency pursues this preference has not been decided, but the following discussion outlines some of the issues being examined.

2. Background of Equivalency Issues EPA is Considering for LDR Phase IV

EPA is considering, in addition to evaluating equivalence at the point of ultimate discharge to surface waters or to a Publicly-Owned Treatment Works (POTWs) (''end-of-pipe equivalence''), conditions for determining equivalence of treatment for decharacterized wastes managed in nonhazardous waste (subtitle D) surface impoundments which would involve consideration of whether treatment is not equivalent due to cross-media transfers of untreated hazardous constituents. In evaluating the above approaches, EPA is looking both at RCRA and other Agency authorities and programs that would ensure protection and provide control equivalent to RCRA.

The Agency has not made any determination as to the best manner to implement the standard enunciated in the opinion. It is certain that the opinion requires at least a demonstration of end-of-pipe equivalence, which will be accomplished when the treatment standards in today's proposed rule are finalized. Whether it requires more is unclear. The opinion appears to focus on treatment of wastewaters. For example, the court stated ''treatment of solid wastes in a CWA surface impoundment must meet RCRA requirements prior to ultimate discharge into waters of the United States or publicly owned treatment works * * *.'' 976 F. 2d at 20, emphasis added). See also id. at 7, 20 (focus on treatment of waste ''streams'', i.e. the liquids in the impoundment); 23 n. 8 (reduction of mass loadings of hazardous constituents of waste stream entering and exiting an impoundment); 24 (court indicates that decharacterized wastes are not held permanently in impoundments, a statement that is uniformly correct for wastewaters but not wastewater treatment sludges); 24 (court focuses on treatment of ''liquids'' in impoundments). At one point, the court also noted, in distinguishing between subtitle C and subtitle D surface impoundments, that sludges in subtitle C impoundments require further management in accord with subtitle C, id. at 24, n. 10, perhaps suggesting by negative implication that sludges in subtitle D impoundments do not.

Equally important, the court held that ''RCRA requires some accommodation with (the) CWA'', id. at 20, see also id. at 23, indicating that to some degree RCRA need not mandate a wholesale disruption of existing wastewater treatment impoundments, provided the CWA treatment system really achieves treatment equivalent to RCRA section 3004(m) treatment: ''In other words, what leaves a CWA treatment facility can be no more toxic than if the waste streams were individually treated pursuant to the RCRA treatment standards.'' Id.

On the other hand, the opinion can be read more broadly to encompass requirements respecting surface impoundment integrity. The court's fundamental concern with dilution, echoing the requirements of section

3004(m), is that dilution does not reduce or destroy hazardous constituents, and thus does not prevent those constituents from entering the environment. Id. at 22, 24, 29–30; see also id. at 23 n. 8 stressing the court's holding that total mass loadings of pollutants ''entering the environment'' must be reduced in order to comply with section 3004(m).

Moreover, the court distinguished a number of times between temporary placement of diluted wastes in impoundments for treatment and permanent disposal in land disposal units, stating that only the temporary placement represents a satisfactory accommodation between RCRA and the CWA. Id. at 24, 25. To the extent hazardous constituents leak or volatilize from impoundments, it can be argued that permanent disposal of untreated hazardous constituents is occurring.

The schedule for issuing the LDR Phase III and IV rules are both subject to settlement agreement, and, according to the schedule established by these settlement agreements, will be proposed only six months apart. Therefore, industry will be able to evaluate the LDR Phase III proposed end-of-pipe equivalency requirements while keeping in mind the upcoming LDR Phase IV rule which must consider sludges, leaks, and air emissions from treatment surface impoundments. The Agency has not yet decided how to pursue the potential equivalency issues related to sludges, leaks, or air emissions; however, the Agency is taking this opportunity to discuss the issues and potential options in these three areas. Furthermore, the Agency solicits data characterizing sludges, leaks, and air emissions from surface impoundments,

a. Sludges. Characteristic wastewaters managed in CWA and CWA-equivalent impoundment-based systems invariably are treated to generate a sludge. Under EPA's existing interpretations of the rules, such sludges are usually considered to be prohibited wastes only if they are themselves hazardous. 55 FR at 22661. This is because generation of a new treatability group is considered to be a new point of generation for purposes of determining where LDR prohibitions attach. The Agency has not determined whether the court decision could or should be read to invalidate this interpretation (although the Agency adopted a ''waste code carry through'' approach for the characteristic wastes addressed in the emergency interim final rule). This will be an issue that must be resolved in the LDR Phase IV rule.

In addressing this issue, it should be noted that the LDR treatment standards for nonwastewaters and wastewaters are by now well established. There are 521 hazardous waste codes subject to LDR technology-based treatment standards. In instances where analytical methods are available, these hazardous wastes are subject to UTS that were promulgated in the LDR Phase II final rule (UTS are, however, based on treatment standards that have been in effect, in some cases, since 1986 and thus are well established). While no decision has been made on whether to regulate these sludges, if the Agency decides to control sludges from CWA and CWA-equivalent surface impoundments, the treatment standards (UTS levels) are already in place.

EPA believes that the likely impact of such an approach would be mixed—that is, some facilities will continue to use surface impoundments and remove and treat the sludge, if necessary, while others will move away from the use of surface impoundments. For example, aggressive biological treatment, such as that typically used by the petroleum refining industry, may achieve UTS levels as generated. Sludges from primary treatment in surface impoundments are more likely to exceed UTS levels. If the Agency decides to control sludges, such an approach may impose significant costs on the facility. Subjecting sludges to UTS may encourage pollution prevention and recycling alternatives to be used prior to placement of wastes in the impoundment, so that sludge treatment standards are not triggered. Comments are solicited on these issues.

b. Leaking Surface Impoundments. While hazardous wastes entering surface impoundments constitute temporary land disposal (because they are being placed there for treatment), leaks from such impoundments constitute permanent land disposal. Such permanent land disposal was clearly a concern of the court. 976 F. 2d at 25–6.

The Agency is considering the following additional controls if the decision is made to address leaking surface impoundments:

EPA already has UTS limits that could be applied to the influent into the surface impoundment when it is determined that it leaks underlying hazardous constituents at levels above UTS. Applying UTS to the influent would assure that only wastes that have been treated in a manner equivalent to RCRA treatment are land disposed.

EPA is also considering applying some of the subtitle D municipal solid waste landfill criteria to address leaking surface impoundments (Municipal Landfill Rule (56 FR 50978, October 9, 1991). The impacts of such an approach on aggressive biological surface impoundments may not be significant. On the other hand, facilities with leaking impoundments engaged in primary treatment could have to perform some type of action such as retrofitting, remediating groundwater, or switching to tank treatment.

A third option being considered is using triggering controls based on the potential risk of any leak. The Agency could require as a performance standard that owners demonstrate that the expected leaks would pose a low level of risk to nearby receptors. Facilities would have the flexibility to change the influent, install engineering controls, or limit potential exposure in order to comply with this performance standard.

c. Air Emissions. Achieving wastewater or nonwastewater standards by merely transferring hazardous constituents to the air may be inconsistent with the court opinion in that excessive, uncontrolled volatilization could be viewed as unequivalent treatment, or unsafe treatment conditions. For example, treatment of volatile organic compounds in surface impoundments may achieve compliance with a wastewater treatment standard by simply transferring pollutants to the air.

If EPA should determine that the court's opinion should be read to require control of excessive volatilization from impoundments to demonstrate equivalent treatment, one option is deferral to CAA NESHAP standards, such as the Benzene Waste Operations NESHAPs and the HON. The Benzene NESHAPs were promulgated on January 17, 1993, and the HON was promulgated on April 22, 1994 (59 FR 19402). The Agency will explore further whether the CAA standards for hazardous air pollutants provide equivalent protection or control of the hazardous constituents of concern.

Another option is extend the applicability of existing air emission controls in RCRA—the recently promulgated RCRA Air Emission Standards (59 FR 62585 (Dec. 6, 1994)). The RCRA Air Emission Standards are self-implementing and are applicable to 90-day units at hazardous waste generator sites. These standards do not apply to surface impoundments which receive waste that was hazardous at the point of generation but was ''decharacterized'' (i.e., rendered nonhazardous) before being placed in the surface impoundment.

The approach EPA is considering in the second option is a ''target mass removal'', which would ensure that hazardous constituents are effectively

removed or destroyed and that standards are not achieved through dilution or air emissions. A key to this approach is that all waste streams commingled with the hazardous waste streams are accounted for, and calculations are made to ensure that dilution is not credited toward achieving the standard. The target mass removal approach is to identify a hazardous waste at its point of generation and determine the mass of hazardous constituents that must be removed to meet UTS. The mass of constituents removed can be calculated by comparing a post-treatment waste determination to the point of generation waste determination. An alternative is to calculate the percent reduction of hazardous constituents that is required to meet the standard, and ensure that associated treatment devices operate at that level of efficiency. Application of this approach could also address the issue of nonamenable waste discussed in Section VI of this preamble. Comments are solicited on the application of this approach.

The likely impacts of establishing air emission requirements are that facilities will pursue pollution prevention, recycling, steam stripping or other treatment to remove volatile organics prior to treatment in surface impoundments. Under this approach, hazardous constituents would either need to be removed prior to entering the surface impoundment, or the impoundment would have to be retrofitted in a way that prevents escape of air emissions.

Comments and data are solicited on options for addressing these three areas of potential cross media transfer from wastewater treatment surface impoundments. Comments and data are also solicited on potential costs and human health benefits.

B. The Hazardous Waste Identification Rule (HWIR)

A recurring concern expressed by many commenters is the relationship between technology-based and risk-based RCRA limits. EPA has established technology-based limits for all LDR rules and will continue to do so in the LDR Phase III rule. The Agency is considering the establishment of risk-based levels, however, under the HWIR that is scheduled to be proposed in the fall of 1995.

The integration of the two approaches could impact how facilities comply with all LDR treatment standards. For example, if the HWIR risk-based limits are determined to minimize threats to human health and the environment, when they are higher than the LDR standards (less stringent), they will satisfy RCRA section 3004(m) and the waste would not have to be treated to meet the LDR technology-based limits. HWTC III, 886 F. 2d at 362. Integration of the LDR and HWIR will be further addressed in the HWIR rulemaking process.

C. Water Rules—the Pulp and Paper and Pharmaceutical Industries Rules

The LDR Phase III end-of-pipe RCRA wastewater treatment standards (i.e., the standards which will satisfy the end-of-pipe equivalence standard enunciated by the court) being proposed today will be applied at the same location that CWA effluent limitation guidelines and pretreatment standards are currently applied. EPA is currently amending effluent limitation guidelines and standards for two industries that use surface impoundments extensively: the pulp and paper and the pharmaceutical industries. Both of these rules are considering in-process limitations of the highly-volatile constituents.

The combined CWA and CAA Pulp and Paper rule was proposed on December 17, 1993 (58 FR 66077). The Pharmaceutical Industry effluent guidelines are scheduled to be proposed by February 1995. One key issue, with respect to both of these industry categories, is the timing of these amended effluent guidelines and standards in relation to promulgation of LDR Phase III standards. EPA believes that these amended guidelines and standards should establish end-of-pipe equivalence. However, these amended rules may not be promulgated or effective until after this LDR Phase III rule takes effect. For reasons discussed later in today's preamble, however, EPA is proposing to wait until the amended rules for these industrial categories take effect before establishing end-of-pipe equivalence standards for these industries.

IV. End-of-Pipe Treatment Standards

A. EPA's General Approach to Setting Treatment Standards and Its Relation to the End-of-Pipe Standards Proposed Today

In the recently-promulgated LDR Phase II rule, EPA significantly simplified the existing treatment standards by adopting Universal Treatment Standards (UTS). 59 FR 47982 (September 19, 1994). These standards apply the same concentration limit for the same constituent in all prohibited wastes. The Agency believes these standards are typically achievable for all prohibited wastes, and greatly improve the implementation of the LDR program by reducing the numbers of different treatment standards from thousands to essentially one per constituent.

That being said, however, the Agency is nevertheless proposing today that UTS not apply to hazardous constituents in decharacterized wastewaters discharged by CWA facilities subject to the rule so long as the facility is subject to an appropriate CWA technology-based or water quality-based standard or limitation for that hazardous constituent. As explained more fully in section B below, the Agency believes that such CWA limitations and standards satisfy RCRA section 3004(m) requirements and therefore that the best means of integrating RCRA and CWA requirements is to have the CWA limitation or standard be the RCRA treatment standard as well. This choice by the Agency, should it be finalized, should not be viewed as any retreat from general applicability of UTS. Indeed, as proposed elsewhere in this preamble, EPA is proposing to apply UTS to various newly identified and listed wastes, as well as to prohibited decharacterized wastes injected into Class I nonhazardous injection wells.

B. End-of-Pipe Treatment Standards for Clean Water Act and Equivalent Wastewater Treatment Systems

As discussed before, EPA must impose treatment standards on wastes that heretofore have not been subject to RCRA regulation. Both RCRA and CWA programs require treatment notification, monitoring, and enforcement; however, they do so using different procedures. This rule proposes an approach, discussed in the following subsections, that integrates requirements under both statutes to the maximum extent possible.

The nonhazardous waste surface impoundments in CWA and CWA-equivalent systems currently have no RCRA permit. For CWA systems, the discharge into navigable waters are subject to a NPDES permit, while discharges to POTWs are subject to pretreatment standards. EPA is today proposing to require that the treatment standard be met at the same point that the NPDES and pretreatment limits are required to be met: Generally, at end-of-pipe. CWA-equivalent systems may be subject to state or local permits, and would be subject to the treatment standards before final discharge to the land.

1. CWA Standards and Limitations as RCRA Section 3004(m) Treatment Standards

RCRA section 1006(b) requires EPA (among other things) to integrate provisions of RCRA and the CWA when implementing RCRA and to avoid duplication to the maximum extent possible with CWA requirements. In keeping with this requirement, EPA is proposing to implement the end-of-pipe equivalency standard in the court's opinion so that a technology-based or water quality-based CWA standard for an underlying hazardous constituent in a CWA facility's discharge will also be considered to be the RCRA BDAT treatment standard for that constituent. (If a CWA standard for an underlying hazardous constituent is not included in the CWA permit, the facility must meet UTS at end-of-pipe. See further discussion in the next subsection.) Consequently, satisfying the CWA standard or limitation for that constituent will also satisfy RCRA. Thus, for example, if a facility managing decharacterized wastes containing benzene has an NPDES permit with a limitation for benzene which reflects Best Available Technology (BAT), that limitation would also satisfy RCRA LDR requirements. In addition, the facility would not be subject to a separately enforceable RCRA standard for benzene. In order to limit the amount of potential administrative duplication, EPA is proposing that the standard remain enforceable only under the Clean Water Act.

EPA is proposing that a technology-based CWA limitation or standard for a hazardous constituent satisfies RCRA because such a limitation or standard best reflects the capability of best treatment technologies to treat a specific industry's wastewater (or, when the limitation is determined by a permit writer using Best Professional Judgment, a specific plant's wastewater). The RCRA UTS for wastewaters were developed by transferring performance data from various industries, and thus EPA need not make that same transfer when industry-specific (or plant-specific) wastewater treatment data is available. (EPA notes, however, that the UTS reflect treatment of wastewater matrices that are particularly difficult to treat, and hence that the Agency's conclusion that these standards are typically achievable is sound.)

It is also reasonable for water quality-based limitations to satisfy RCRA requirements. These limitations must be at least as stringent as the limitations required to implement an existing technology-based standard. (See CWA section 301(b)(1)(c).) Even where there is no existing BAT limitation for a toxic or nonconventional pollutant, a permit writer must determine whether BAT would be more stringent than the applicable water quality-based limitation, and again, must apply the more stringent of the two potential limitations. (40 CFR 125.3(c)(2).) Consequently, a water quality-based limitation not only reasonably satisfies RCRA section 3004(m) requirements, but can be viewed as a type of site-specific minimize threat level.

If a facility has received a Fundamentally Different Factors (FDF) variance, EPA is proposing that the limitations established by that variance also satisfy RCRA requirements. Limitations established by the FDF variance process are technology-based standards reflecting facility-specific circumstances, and hence can appropriately be viewed as BDAT as well, just as with RCRA treatability variance standards. See 51 FR at 40605 (Nov. 7, 1986).

EPA also believes that there are adequate constraints in the CWA implementing rules to prevent these end-of-pipe standards from being achieved by means of dilution. First, many of the effluent limitation guidelines and standards regulate the mass of pollutants discharged, and thus directly regulate not only the concentration of pollutant discharged but the degree of wastewater flow as well. Where rules are concentration-based, NPDES permit writers can set requirements which preclude excessive water use, and EPA has so instructed permit writers. (See 58 FR 66151, December 17, 1983, encouraging permit writers to estimate reasonable rate of flow per facility and factor that flow limit into the permit.) These permit conditions can take the form of best management practices, explicit mass limitations, and conditions on internal waste streams. 40 CFR 122.44(k); 122.45(f), (g) and (h). Indirect dischargers are also subject to specific CWA dilution rules in both the general pretreatment rules and the Combined Wastestream Formula (as well as through many of the categorical standards). 40 CFR 403.6(d) and (e). Many of the guidelines and standards also preclude addition of stormwater runoff to process wastewater to preclude achieving treatment requirements by means of dilution. The Agency is accordingly of the view that end-of-pipe equivalence would be achieved by treatment that removes or destroys hazardous constituents, as required by section 3004(m). (This discussion, of course, still leaves open the questions, left for the LDR Phase IV rule, of how existence of leaks, air emissions, or depositions of constituents in sludges affects determinations of equivalent treatment and similar issues.)

With respect to indirect dischargers, EPA is further proposing that national categorical standards or, potentially, plant-specific standards contained in control mechanisms (i.e. contracts between industrial users and the POTW or other governmental entity) satisfy RCRA where these standards reflect pass through findings. If it is found that a particular pollutant/hazardous constituent will not pass through to navigable waters because of efficacious treatment by the POTW, there will be full-scale treatment of the pollutant/hazardous constituent before its final release into the environment. EPA is proposing that such full-scale treatment satisfies the court's equivalency test. EPA is also proposing to add such pass-through situations as a valid ground for indirect dischargers to obtain a RCRA treatability variance, for the same reasons.

However, the Agency is not proposing that standards based on interference with POTW operations be deemed to also satisfy RCRA requirements. Interference findings reflect the effect the pollutant may have on overall POTW treatment, not necessarily treatment of the particular constituent. Because the relationship of an interference-based standard with treatment of a particular pollutant is tenuous, the Agency does not believe such a standard can be said to be equivalent to RCRA treatment. The Agency solicits comment on the prevalence of interference-based standards.

2. Implementation When CWA Standards and Limitations Will Be the Exclusive Standard

a. Direct Dischargers

EPA is proposing that if a direct discharger subject to this rule (i.e. generating ICRT wastes containing hazardous constituents at concentrations exceeding UTS at the point the wastes are generated and treating those wastes in surface impoundments) has an NPDES permit containing a limitation for that pollutant based on BAT, New Source Performance Standards, or a more stringent water quality standard, or is regulated through controls on an indicator pollutant, then there are no RCRA requirements other than documentary recordkeeping. An indicator pollutant is a pollutant for which control of that pollutant is considered to indicate control of a

specific constituent. For example, total phenols is an indicator for a specific phenol. The Agency solicits comments on specific circumstances where a pollutant is an indicator of a specific underlying hazardous constituent.

If the existing NPDES permit either does not contain a limitation for the pollutant or does not regulate the pollutant through an indicator, a facility would have several choices. It could do nothing, in which case the hazardous constituent would be subject to the UTS, and compliance would be monitored at end-of-pipe (unless the facility chooses to segregate the wastestreams for treatment, in which case compliance would be measured in the segregated stream after treatment). These standards would be implemented by rule, and thus would not be embodied in a permit. Enforcement would be solely under RCRA.

In the alternative, a facility could seek amendment of its NPDES permit pursuant to § 122.62(a)(2), requesting that the applicable permitting authority modify the permit to add limits for the underlying hazardous constituents reflecting BAT for that pollutant at the facility. Assuming proper design and operation of the wastewater treatment technology, a permit writer in such a case could modify the permit to add a limitation for the pollutant based on Best Professional Judgement reflecting actual treatment (40 CFR 125.3(c)). Modification requests would be processed pursuant to the procedures found at § 124.5. The modified permit limitation would be a CWA requirement and enforceable solely under that statute.

A final alternative is for the facility to seek a RCRA treatability variance. EPA is proposing to amend the grounds for granting such a variance to include situations where a facility is treating decharacterized wastes by treatment identified as BAT, the technology is designed and operated properly, but is not achieving the UTS (see proposed amendments to § 268.44(a)). The amendment would also apply to indirect dischargers properly operating technology identified as the basis for their PSES (Pretreatment Standard for Existing Sources) or their PSNS (Pretreatment Standard for New Sources) standard.

b. Indirect Dischargers

The same alternatives exist for indirect dischargers. First, if an underlying hazardous constituent is not regulated nationally by a PSES, PSNS, or by a local limit, and so therefore becomes subject to the UTS for that constituent, that UTS would be enforced as a RCRA standard. In addition, if there is no pretreatment standard (i.e., PSES/PSNS) for an underlying hazardous constituent, because the Agency determined that there was no pass through, then the RCRA standard for that underlying hazardous constituents does not apply. However, in cases where an underlying hazardous constituent is not already subject to categorical PSES, categorical PSNS, or to a local limit in a control mechanism reflecting PSES or PSNS-level treatment, water quality, or pass through, the control mechanism between the indirect discharger and the applicable control authority would have to be modified in order to avoid application of the UTS by rule. Although procedures for modifying control mechanisms are less institutionalized than those codified for modifying direct dischargers' permits, the Agency initially does not believe this will pose a significant logistical problem because the number of indirect dischargers significantly affected by this rule (i.e. those treating decharacterized wastewaters in surface impoundments before discharge to a POTW where categorical PSES or local limitation does not address a particular hazardous constituent, and discharging greater than *de minimis* levels of hazardous constituents) appears to be small. The Agency continues to solicit information on the number of indirect dischargers so affected, however.

EPA also solicits comment on the best means of applying the equivalency requirement to industries where the Agency is also undertaking significant revisions to applicable CWA requirements on a somewhat slower schedule than this rule. The Agency has in mind particularly the forthcoming amended standards for the pharmaceutical and pulp and paper industrial categories.[6] Amended BAT/PSES standards for these industries are likely to encompass most or all of the underlying hazardous constituents typically found in these industries' wastewaters, and will reflect EPA's best judgement of the appropriate optimized technology-based controls for those pollutants, as well as the time needed to implement those controls. The Agency's initial preference, in keeping with the requirements of RCRA section 1006, is to wait until those controls are in place before evaluating end-of-pipe equivalency for those industries. The Agency solicits comment on this matter.

[6] The Pharmaceutical Rule is scheduled to be proposed on February 28, 1995; the Pulp and Paper Rule was proposed on December 17, 1993 (58 FR 66077).

Finally, if the facility treats to UTS and does not modify its CWA permit or control mechanism to include a CWA standard/limitation for an underlying hazardous constituent, EPA is proposing minimal record-keeping requirements, under RCRA authority. EPA is proposing that generators can use generator knowledge to identify the underlying hazardous constituents present at the point of generation of the ICRT wastes which are not covered by a CWA limitation and hence must be treated to meet UTS (assuming no permit modification, etc.). Monitoring at potentially hundreds of points of generation would be unnecessarily burdensome and so is not being proposed as a requirement. EPA is proposing that this information be kept on-site in files at the facility. EPA proposes that the facility will then monitor compliance with the UTS standard for each of these constituents at the point of ultimate discharge on a quarterly basis, and that the results of this monitoring also be kept in the facility's on-site files. Monitoring compliance with UTS at the point of discharge provides appropriate assurance of effective treatment. Failure to comply with the RCRA UTS standard must be reported by the facility to the EPA Regional or authorized state RCRA personnel.

Finally, the Agency is proposing to grant a two-year national capacity variance to allow facilities time to repipe and build on-site treatment, or to modify their CWA permit.

EPA is proposing these same requirements for documenting compliance for zero dischargers without NPDES permits who are affected by this rule. The absence of a permit necessitates some alternative means of documenting compliance, and the scheme outlined above seems to be the least burdensome scheme which would still provide a reasonable means of enforcing this rule.

C. Treatment Standards for Class I Nonhazardous Injection Wells

1. Introduction

Generally, facilities injecting decharacterized ICRT wastes into Class I nonhazardous injection wells do not treat their waste beyond removing the characteristic by mixing and diluting, plus some filtering of solids. There are as many as 149 such facilities. The average flow of a typical Class I nonhazardous well is estimated at 107,000 gallons/day. Typically, the volume of the hazardous wastestreams is relatively small (less than 25%) compared to the volumes of

nonhazardous wastestreams being co-injected.

EPA is proposing that these characteristic wastestreams be considered prohibited at the point they are generated. The Agency is further proposing that underlying hazardous constituents in these prohibited wastes be treated to meet UTS levels before the waste is injected. The treatment must destroy, remove, or immobilize the underlying hazardous constituents in the waste that are present in concentrations exceeding UTS at the point the wastes are generated. It may be that in some situations, one type of treatment may pose more risk than another type, notwithstanding that it removes or destroys hazardous constituents to a greater degree. In such cases, facilities may seek a treatability variance to allow the use of the less aggressive treatment technology (assuming such treatment technology satisfies the 3004(m) standard). In such a situation, the technology posing greater risk could be considered to be ''not appropriate to the waste,'' (see 40 CFR 268.44(a)) and a variance could be granted to allow the use of alternative treatment. EPA believes this result satisfies the court's mandate in the Third Third opinion.

EPA believes that the decision in the Third Third opinion necessitates revising the applicability of the 40 CFR Part 148 requirements, Hazardous Waste Injection Restrictions, as they now apply to Class I nonhazardous injection wells. The Agency is clarifying in proposed revisions to 40 CFR 148.1, that owners and operators of Class I nonhazardous wells must determine, under certain circumstances, whether the LDRs now apply to their facilities. Class I wells which inject nonhazardous wastes at the point of injection must now determine if any of these wastes exhibited a characteristic of hazardous waste at the point they were generated. Accordingly, EPA is proposing to amend § 148.1 and redefine the purpose, scope, and applicability of the Part 148 regulations.

To conform with the Court's ruling the Agency is also proposing to include Class I nonhazardous wells within the scope of the dilution prohibition at 40 CFR 148.3. Class I wells thus may not impermissibly dilute their hazardous waste streams in order to substitute for or avoid treatment levels or methods established in the LDRs.

2. Compliance Options for Class I Nonhazardous UIC Wells

In order to comply with today's requirements, facilities could segregate their characteristic streams for separate treatment. Treatment could occur either on-site or off-site. After the characteristic wastes have been treated to meet UTS, they can be land disposed (either by injection or by some other means). A facility could also treat the aggregated mass of wastewaters (i.e. the commingled characteristic and non-characteristic wastewaters) to meet UTS before injection.

Another option is for the facility to seek a no-migration variance under § 148.20. Thus, EPA is proposing today to amend the provisions under § 148.20 to allow facilities to seek a no-migration variance for their injection well(s). This amendment, however, would simply formalize EPA's existing interpretation that no-migration variances are already available for such wells. See 59 FR at 48013 (September 19, 1994). If these facilities submit a no-migration petition to EPA and effectively demonstrate to EPA that their formerly characteristic wastes (including any hazardous constituents contained in those wastes) will not migrate from the injection zone for 10,000 years or no longer pose any threat to human health and the environment because the wastes are attenuated, transformed, or immobilized by natural means in the injection zone, then they may continue injection without further treatment.

Each no-migration petition has, to date, taken on average 3 years to process. This time may increase if the Agency receives a large number of petitions. EPA continues to emphasize, however, that interested petitioners need not wait for this rule to be promulgated before pursuing the petition process. Petitions for a no-migration variance for Class I nonhazardous wells receiving decharacterized wastes can be received and evaluated now. Id.

EPA is also proposing to extend the availability of case-by-case extensions of the effective date to Class I nonhazardous injection facilities for any applicable Part 148 prohibition. Proposed revisions to § 148.1(c)(1) and § 148.4 will allow Class I well owners and operators on a case-specific basis to follow procedures of § 268.5 to receive a one-year extension, renewable for an additional year, from the effective date of the prohibitions, in order to acquire or construct alternative treatment capacity.

EPA today is proposing two other means for facilities with Class I UIC wells to comply with the LDR requirements. The first involves removing the same mass of hazardous constituents from streams to be injected through pollution prevention rather than pre-injection wastewater treatment. The second involves creating an exception for situations when the characteristic wastestreams make only a de minimis contribution to the waste mixture being injected. These two proposed options are described below in more detail.

3. Pollution Prevention Compliance Option

The D.C. Circuit stressed that the equivalency test, if enunciated, is required to ensure that mass loadings of hazardous constituents to permanent disposal units are reduced to the same extent they would be if a prohibited waste was treated exclusively under a RCRA regime. 976 F. 2d at 23 n. 8. EPA is proposing that these reductions in mass loadings can be achieved by removing hazardous constituents from any of the wastestreams that are going to be injected, and that these reductions in mass loadings can be accomplished by means of pollution prevention.[7] Thus, if a facility can, for example, make process changes that reduce the mass of cadmium by the same amount that would be removed if the prohibited wastestream was treated to satisfy UTS, the facility would have satisfied LDR requirements. The facility would thus no longer have to demonstrate that it is meeting UTS concentration levels.

Under this option, a hazardous constituent could be removed from either the hazardous or nonhazardous portion of the injectate, and could be removed before a waste is generated. The result would be that the mass loading into the injection unit would be reduced by the same amount as it would be reduced by treatment of the prohibited, characteristic portion of the injectate.

[7] In a 1992 memorandum from F. Henry Habicht, then EPA Deputy Administrator, and reiterated in a June 15, 1993 memorandum from Carol Browner, EPA Administrator, the Agency has defined pollution prevention as ''source reduction'' (as defined in the 1990 Pollution Prevention Act (PPA)), and other practices that reduce or eliminate the creation of pollutants through (1) increased efficiency in the use of raw materials, energy, water, or other resources; or (2) protection of natural resources by conservation. The PPA defines ''source reduction'' to mean any practice which (1) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; (2) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

''Source reduction'' includes: equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control. Recycling, energy recovery, treatment, and disposal are not included in the definition of pollution prevention in the PPA.

The mass/day reduction of a particular underlying hazardous constituent can be calculated by comparing the *injected baseline with the allowance*. The injected baseline is determined by multiplying the volume/day of hazardous waste generated (and subsequently injected) times the concentration of hazardous constituents prior to the pollution prevention measure. The allowance is determined by multiplying the volume/day of a hazardous constituent generated/injected times the UTS for that constituent. The difference between the injected baseline and the allowance is the mass/day reduction.

After successful employment of a pollution prevention measure, the facility must demonstrate that the injected mass achieves the required mass/day reduction. The post-pollution prevention measures would be corrected for production variations by multiplying the mass/day reduction times the ratio of the pre-pollution prevention production baseline divided by the production on the day of sampling after the pollution prevention is successfully implemented. A correction for production variations is needed because the amount of an underlying hazardous constituent in the injectate is dependent upon the level of production. If the initial reading is taken on a day of low production, and the post-pollution prevention reading is taken on a day of high production, then without the correction factor the mass/day reduction calculation would be an underestimate.

The following is an example to illustrate this discussion:

Facility X is daily injecting 1 lb. of benzene (an underlying hazardous constituent in a characteristically hazardous wastestream). The mass allowed for benzene (based on the volume of the hazardous wastestream they inject and the UTS for benzene) is 0.3 lbs. Therefore, the mass of benzene that needs to be removed in order for Facility X to be in compliance with the LDR is 0.7 lb.

Facility X decides to use pollution prevention to remove the 0.7 lb. of benzene from their system. Before employing pollution prevention, Facility X monitors and determines that on a day when they produce 10 tons of product, 3 lbs. of benzene is being injected. After employment of pollution prevention, Facility X monitors and determines that 1 lb. of benzene is being injected. On this day of monitoring they are producing 5 tons of product. Therefore: 3 lbs. − 1* (10/5)=1 lb. of benzene removed, which means they are in compliance with LDR, since 0.7 lb. was all that was necessary to be removed.

EPA is proposing that the results of the monitoring of the underlying hazardous constituent concentration and the volume of the hazardous waste stream being injected, both on the day before employment of pollution prevention, and the day after successful employment of pollution prevention, be reported to the EPA Region or authorized State as a one-time notification. The facility will also include in this report a description of the pollution prevention method used. In addition, the facility will monitor and keep on-site records of the results on a quarterly basis. Quarterly monitoring is already required under SDWA regulations (40 CFR 146.13(b)). The reporting requirements for this option will be a one-time notification; however, if the facility changes its pollution prevention method, they must repeat the initial monitoring and notify the EPA Region or authorized State. The Agency is proposing to consider only those pollution prevention measures taken after the date of publication of this proposed rule.

EPA is proposing that, at this time, the pollution prevention alternative as described in this section of the preamble, be available only for facilities using Class I nonhazardous injection wells. EPA is not proposing the same alternative for facilities using surface impoundments because until the LDR Phase IV rules are completed, there will not be a test as to what comprises equivalent treatment at such facilities. That is, before EPA determines how such issues as potential releases to air and groundwater are to be resolved, there is no final equivalency standard for these facilities. It thus appears to EPA to be premature to determine how a pollution prevention alternative would fit into such a scheme. EPA also notes that because surface impoundments can pose particularly adverse environmental risks, see RCRA section 1002(b)(7) and *CWM* v. *EPA*, 919 F. 2d 158 (D.C. Cir. 1992), the Agency in any case may wish to develop alternative approaches for decharacterized wastes being managed in such units.

EPA also solicits comment on a number of issues relating to this option. The first is comment on using other production parameters besides or in lieu of volume (e.g., mass, square footage, etc.). The second is comment on use of site-specific non-linear production relationships and multiple production factors to deal with potential differences in underlying hazardous constituents produced in the hazardous and nonhazardous waste streams. Third, EPA solicits comment on whether more than one day is needed for monitoring pre and post-employment of the pollution prevention option (i.e., some pollution prevention methods may require more than one day to show results).

EPA also solicits comment on the best means of ensuring that the mass reductions achieved through this pollution prevention alternative are objectively verifiable and enforceable. In particular, EPA solicits comments on the best means of documenting baseline levels, and whether flow reductions (as opposed to hazardous constituent removal) should be allowed as an exclusive means of obtaining the requisite reductions in mass loadings of hazardous constituents.

Finally, EPA requests comment as to whether it may eventually be possible to implement this type of alternative by means of a pollutant trading type of approach, whereby the hazardous constituent being removed by means of pollution prevention need not be identical to the hazardous constituent in the characteristic stream. For example, carcinogenic metals could all be grouped rather than evaluated individually. This type of approach may add desirable flexibility if appropriately constructed.

4. De Minimis Volume Exclusion

There is a question of whether EPA should require treatment of relatively small decharacterized hazardous waste streams injected into Class I nonhazardous wells when the result will be essentially the same level of contaminants being injected (and thus risks are not measurably reduced). Therefore the Agency is proposing to establish a de minimis volume exclusion for small volumes of formerly hazardous wastes being injected into these wells along with a greater volume of nonhazardous waste.

There are two existing LDR de minimis provisions (§ 268.1(e) (4) and (5)). Both are for ignitable and/or corrosive wastes (D001 and D002); the first is for de minimis losses of D001 or D002 to wastewater treatment systems of commercial chemical products, while the second is for de minimis losses of D001 or D002 laboratory wastes. Under the approach being proposed today, when underlying hazardous constituents are present in ICRT wastes at concentrations less than 10 times UTS at the point of generation, and the combination of all of the characteristically hazardous streams together are less than 1% of the total flow at point of injection and after

commingling with the nonhazardous streams, and that the total volume of hazardous streams are no more than 10,000 gallons/day, no segregation and/or treatment would be required. The 1% total flow criteria is consistent with the existing de minimis exemption for laboratory wastes (§ 268.1(e)(5)); however, the Agency solicits comment on the 1% criteria, the 10 times UTS criteria as well as the 10,000 gallons/day maximum—should these numbers be higher, lower, or dropped?

The Agency intends to continue analyzing collected data that may provide additional justification for, or alternatively, cause the Agency to modify any or all of the criteria on which it has based the de minimis exemption for injected waste. This analysis will be conducted in conjunction with revising the Regulatory Impact Analysis for underground injected wastes, and may include additional computer modeling used in assessing the health risks posed by Class I injection wells. The Agency may conduct this analysis, for example, by varying specific parameters in the modeling, such as well pump rates, total volume of waste injected, and waste concentrations, and by altering postulated exposure scenarios describing health risks posed by injection of Phase III wastes. Upon conclusion, the analysis may support the proposed de minimis criteria or may cause the Agency to revise them in the final rule. The Agency solicits any comment on this planned approach and any alternative suggestions.

The Agency is proposing that if a generator determines that he meets the requirements of the de minimis exemption, that he place a one-time notice in his files stating the % flow and concentration of the underlying hazardous constituents, and volumetric flow of prohibited wastestreams (i.e. streams exhibiting a characteristic at the point of generation). The concentration of underlying hazardous constituents would have to be determined through monitoring, and the % flow can be determined through several methods. One method for estimating annual average wastewater stream flow is to use the maximum annual production capacity of the process equipment, along with knowledge of the process and mass balance. A second method would involve using measurements that are representative of average process wastewater generation rates. A third method is to select the highest flow rate of process wastewater from the historical records. Other knowledge-based methods, which would be less expensive alternatives to actual measurement, could also be used. EPA solicits comment on these alternatives.

D. Point of Generation Discussion

1. Introduction

It has long been the rule that land disposal prohibitions apply at the point hazardous wastes are generated. See e.g. 55 FR at 22652 (June 1, 1990); 261.3(a)(2)(iii). Some members of the regulated community, including the Chemical Manufacturer's Association (CMA), have asked EPA to reconsider this issue in light of the Third Third rule and the D.C. Circuit opinion interpreting that rule. See *CWM* v. *EPA* (976 F. 2d 2 D.C. Cir. 1992). Among other things, the court held that hazardous constituents present above concentrations ''sufficient to pose a threat to human health and the environment'' in prohibited wastes, including characteristic wastes, must meet LDR treatment standards. See 976 F. 2d at 16.

The regulated community has argued that continued application of the point of generation rule could lead to situations where prohibitions would attach to particular characteristic wastestreams and trigger a host of potentially disproportionate consequences, without necessarily furthering any of the protective objectives of the LDR program. Many industrial processes consist of hundreds or thousands of streams, some of which exhibit characteristics only for a short time or (for batch processes) intermittently. The streams often exist within the physical confines of an industrial process, and may be collected within a common sump or other aggregation point. If one of the streams should exhibit a characteristic of hazardous waste, the entire system of wastewater treatment or other management could be affected if the system contains an impoundment or injection well.

These commenters have also requested that EPA revisit the current interpretation that prohibitions attach at the instant of generation and that this requires in certain cases knowledge or monitoring of many internal streams. They argue that some of these streams may not be readily amenable to monitoring because everything within the process is hard-piped to a common collection point. It should be noted that EPA previously considered the practical difficulties associated with sampling or monitoring wastes within closed-process units. See 55 FR 25760, 25765 (July 8, 1987).

The commenters have expressed concern that there are likely to be circumstances where mass loadings of hazardous constituents to the environment are not significantly affected by allowing initial aggregation of residual streams from a process. They also have expressed concern with the practical impacts and achievability of determining the precise content of potentially thousands of internal wastestreams within an industrial facility.

In response to these concerns raised by industry groups following the Third Third opinion, the Agency is soliciting comment on a number of approaches to modify the current point of generation approach for making LDR determinations for certain types of wastes. These approaches also could be applied more generally for purposes of subtitle C to determine at what point a waste is generated.

2. Background

EPA has required LDR determinations to be made at the point which hazardous wastes are generated since the Solvents and Dioxins final rule (51 FR 40620, November 7, 1986). EPA asserted the authority to make LDR determinations at either point of generation or point of disposal in the Third Third final rule (55 FR 22652–53). The court invalidated such selectivity (976 F. 2d at 23), but did hold that at least the dilution prohibition did not have to apply to invalidate use of CWA treatment impoundments performing RCRA-equivalent treatment. 2d. at 23–4.

In the course of finalizing the California list rule, EPA solicited comment on a ''point of aggregation'' approach to assessing when prohibitions attached. (See 52 FR at 22356 (June 11, 1987) where point of aggregation is defined as a point of common aggregation preceding centralized wastewater treatment.) Most commenters at that time criticized such an approach on the grounds that the ''point of aggregation'' was by no means readily determinable and could result in wastes being treated less or, in some cases, being diluted impermissibly. EPA rejected the approach for these reasons. 52 FR at 25766 (July 8, 1987).

The following options, which are being presented for comment, would narrowly redefine the point at which the land disposal prohibitions attach.

3. Similar Streams Generated by Similar Processes

One possible revision would address situations in which like streams are generated from like processes and combined as a matter of routine practice. An example would be collection of rinses from sequential

rinses in a manufacturing process, or multiple rinses from parallel manufacturing lines all making the same product. In these circumstances, all the rinse water could contain the same hazardous constituents in roughly the same concentrations. Variations in hazardous constituent concentrations would reflect normal process variability, so that mass loadings of hazardous constituents to the environment over time would not alter if the rinses are aggregated and disposed. EPA seeks comment on whether or not such collection of like streams from like units should be considered impermissible dilution, since some in the regulated community might view it as counter-intuitive in many cases to even consider these similar process outputs to be separate.

4. Streams From a Single Process

Industrial facilities frequently collect residual streams from a process in a common unit such as a sump. In many cases, these streams are similar in composition because they all come from a common unit process. Consequently, although some of the residual streams could exhibit a characteristic before common collection, long-term average mass loadings of hazardous constituents per unit of production may not vary significantly, even though the waste concentrations may vary within a normal range over time.

Moreover, where residues are generated within a unit process, it might be possible to view these streams as still within the ''normal part of the process that results in the waste'', S. Rep. No. 284, 98th Cong. 2d sess. at 17, and consequently that any routine combination of these streams from the common process would not be impermissible dilution. Id. Of course, there is the possibility of abuse in any approach that allows combination of residues. Characteristic wastestreams not normally generated as part of the unit process could be re-piped in order to dilute the characteristic and avoid treatment of underlying hazardous constituents. This would remain impermissible dilution under any of the approaches EPA is considering.

This approach differs from the ''point of aggregation'' approach EPA rejected as part of the California List rule in that it limits the mixing of waste streams to wastes generated within a single unit process. In the initial ''point of accumulation'' approach, wastes from various sources could be mixed in a sump, as long as the sump was the first point of accumulation. This option limits the mixing to single manufacturing steps (unit operations).

5. ''Battery Limits''

The CMA has suggested an expanded version of the option discussed above. Instead of limiting aggregation to that normally occurring within a single unit process, they would view an entire battery of processes (associated with making a single product or related group of products) as a single manufacturing step. CMA would use the logic of the approach described in the previous section to allow all residues generated from that sequence of processes to be combined before a determination is made as to whether wastes are prohibited. Under CMA's approach, determinations as to whether characteristic wastes are prohibited could be made at this point where all of the aqueous waste streams from a unique industrial process are aggregated (referred to by CMA as ''battery limits''), or at a point that a stream exits the manufacturing process unit where it is generated (''point of rejection'').

Such aggregation could, in CMA's view, be considered to be ''part of the normal process that results in the waste'' (S. Rep. No. 284, 98th Cong. 1st sess. 17) so that the aggregation within the industrial process battery limits need not be considered to be impermissible dilution. CMA believes that this approach could ease monitoring burdens, simplify point of generation determinations, facilitate legitimate wastewater treatment and avoid accounting for characteristic properties and underlying hazardous constituents in intermittent streams such as streams from batch processes, or from characteristic streams resulting from one-time spills or other process emergencies.[8]

6. Solicitation of Comment

The Agency solicits comment on the composition of internal residual streams within discrete processes when one or more of the streams exhibits a characteristic in order to determine how frequently such streams are similar with respect to identity and concentration of hazardous constituents. EPA also solicits comments on how difficult it is to identify the physical boundaries of a unit process, and what safeguards could be developed to assure that characteristic streams not normally part of a unit process are not diluted by re-piping and combination with unrelated streams.

The Agency seeks comment on potential difficulties with all three options, but mostly the third option. Namely, the various limits do not seem to be graphically self-defining, and, hence, could be difficult to implement. The Agency is also concerned about the possibility of impermissible dilution of non-*de minimis* characteristic wastewater streams whenever large numbers and volumes of wastewaters are brought together and characteristics are eliminated without hazardous constituents being removed or destroyed.

7. Situations Where Existing Point of Generation Determinations May Remain Appropriate

a. Listed Wastes. In considering the above approaches, as well as others, it could be argued that any modification to the point of LDR determination should apply only to characteristic wastes and F001–F005 (spent solvents) listed wastes. In evaluating wastes from other sources for listing (including other ''F'' series wastes), EPA has carefully evaluated the various waste streams and has defined the point of generation as part of the listing description. Therefore, it may be inappropriate to modify that description with a more generic point of prohibition rule. EPA solicit comment on this issue.

b. Prohibited Wastes Whose Treatment Standard is a Method of Treatment. Section 261.3(b) states that characteristic wastes whose treatment standard is a specified method of treatment may not be diluted to remove the characteristic in lieu of performing the specified method of treatment. Principal examples of such wastes are high TOC ignitable wastes, characteristic pesticide wastes, and certain characteristic mercury wastes. 55 FR at 22657. EPA indicated that these wastes are not typically amenable to adequate treatment by means other than the designated treatment methods,[9] so that aggregation to remove the characteristic is impermissible dilution unless treatment by the required method follows. *Id.*

EPA's initial view is that these wastestreams should remain prohibited at the current point of generation. The Agency has made a considered decision that these wastes require a particular type of treatment, and the wastestreams themselves are clearly delineated. 55 FR at 22657. In addition, the treatment

[8] However, spills of commercial chemical products exhibiting a characteristic, an example mentioned by CMA, are already not considered to be prohibited provided amounts spilled are de minimis, as defined at 268.1(e)(4) (59 FR 47982, September 19, 1994). See generally, CMA's submission to EPA of October 5, 1994, part of the record for this proposed rule.

[9] *De minimis* losses of the discarded commercial chemical product form of these wastes are not considered to be prohibited. 40 CFR 268.1(e)(4).

methods for a number of these wastes (including high TOC ignitable wastes and characteristic mercury wastes) include or require resource recovery, another reason to ensure that this type of treatment continues to occur. *Steel Manufacturers Association* v. *EPA*, 27 F. 3d 642, 647 (D.C. Cir. 1994). EPA solicits comment as to whether any alteration of the point at which LDRs attach to these wastes should be reconsidered.

8. Implications Beyond LDR Rules

The Agency believes that narrowly redefining the point at which wastes are subject to RCRA regulation should be considered because of industry's concerns with the impact this approach is having on the program currently and what potential impact it may have in the future. Strict interpretation of the current point of generation has already raised questions with respect to the status of a variety of similar wastes that sometimes exhibit the hazardous waste characteristic and are routinely mixed (e.g., spent antifreeze from automobiles, boiler cleanout wastes, emission control residues). This issue may become even more important in the future as EPA adopts exit levels which may be established by the Hazardous Waste Identification Rule.

While absolute clarity of the applicability of RCRA may result from the current point of generation requirement, industry commenters feel that it could be magnified in the future by this and other rulemakings. In considering these concerns, EPA does not wish to undermine the effort to segregate the most concentrated wastes for source reduction or treatment. EPA solicits comment on whether any of the approaches described achieves the proper balance among these goals.

V. Discussion of the Potential Prohibition of Nonamenable Wastes From Land-Based Biological Treatment Systems

This section solicits comment on two regulatory frameworks received from industry and from treaters of hazardous wastes concerning refractory underlying hazardous constituents in land-based biological treatment systems. First, the Environmental Technology Council (ETC) submitted comments to the Agency on EPA's March, 1993 Supplemental Information Report on potential responses to *CWM* v. *EPA*. The ETC raised concern as to whether the constituents from these decharacterized wastes when placed into biological impoundments are merely being diluted and discharged; volatilized from the surface of the impoundment; or simply end up concentrating in the sludge at the bottom of the impoundment. The ETC labeled these constituents whose primary fate is air or sludge (or discharge without treatment) via one of these paths as ''nonamenable to biotreatment.'' The comment suggested several criteria for determining whether process streams with ''nonamenable'' constituents should be kept out of surface impoundments.

Secondly, CMA provided EPA with similar recommendations in August 1993. This section also considers CMA's suggestions for managing refractory chemicals in land-based biological treatment units.

A. Technical Overview

Many ''decharacterized'' wastes (i.e., wastes that were formerly hazardous wastes due to their ignitable, corrosive or reactive properties as generated but which no longer exhibit a characteristic by the time they are land disposed) are placed in Subtitle D surface impoundments for the purpose of biological treatment. In theory, microorganisms in the impoundment can degrade organic constituents in these wastes (under aerobic and/or anaerobic conditions) to carbon dioxide and water.

The ETC comment suggested that EPA identify and prohibit wastes containing these ''nonamenable'' constituents from biological treatment impoundments. The issue facing EPA is whether there are wastes for which biological treatment is not BDAT either because biological treatment cannot adequately reduce hazardous constituents or because biological treatment simply transfers hazardous constituents to other media, and, if so, whether an alternative regulatory scheme is appropriate. While the LDR Phase IV rule will specifically address the concerns with respect to sludges, leaks and air emissions, EPA has committed to raising certain technical issues concerning ''nonamenability'' in the LDR Phase III proposed rule and has also committed to discuss the suggested regulatory resolutions submitted by both the ETC and the CMA, who also submitted comments pertaining to this issue.

What follows is EPA's interpretation of the fundamental concerns which fostered this option, a discussion of the technical issues inherent to this approach and an identification of alternative approaches to address these underlying concerns. The issue of whether RCRA can require segregation of refractory hazardous wastes streams entering land-based surface impoundments is closely connected to the Agency's approach to sludges, leaks and air emissions in the LDR Phase IV rule. The Agency is therefore delaying any final action on the components of the ETC comments, or on the CMA suggestions, until LDR Phase IV when more comprehensive decisions can be made on each issue.

B. Summary of the ETC's Position

The full text of the ETC's comments can be found in the administrative record for today's rule. This section summarizes that document.

The ETC asserts that ''Hazardous constituents in ICR wastes that are not amenable to the biological or sedimentation systems used in CWA lagoons are not receiving RCRA-equivalent treatment.'' They then propose a definition of ''nonamenable waste streams'' and suggest a regulatory scheme for keeping these streams out of surface impoundments.

In particular, the ETC recommends that EPA should establish treatment standards for ICR wastes that require destruction and removal of hazardous constituents in the waste as generated, and allow only those ICR wastes that contain hazardous constituents for which biological treatment is the best method to be managed in nonhazardous waste surface impoundments. They provide lists of individual constituents and constituent categories that should be segregated and restricted from biological units. These include the following individual chemicals: mercury, vanadium, chromium, cadmium, lead, and/or nickel, or the following groups of chemicals: aromatic compounds; acrylates, phenolics, and highly oxidized constituents such as phthalates, aldehydes, and ketones; nitrosamines, amines, nitrophenolics, and aniline compounds and most chlorinated and brominated organic constituents. ETC also recommends segregating the following categories of waste: Highly volatile and non-water-soluble constituents, because of the likelihood of air emissions during biological treatment; and the acutely toxic P-listed wastes, because they are poisonous to the biological treatment system. The ETC explicitly recommends the following criterion for designating a waste stream ''amenable to biological treatment'': the waste must contain less than 1% solids, must be free of oil and grease, and must contain less than 10 ppm total heavy metals.

ETC then defines ''ICR waste streams not amenable to biological treatment'' as: ICR wastes with constituents (from the groups listed above) at individual concentrations greater than 100 x F039 wastewater treatment standards; and ICR wastes with ''water insoluble and

highly volatile'' F039 constituents ''that are more likely to be released to air and not treated. (ETC did not indicate at what point these concentrations should be measured, although they did suggest that wastes should be segregated at ''battery limits''.)

The ETC believes that such ''nonamenable'' wastes should either be required to undergo pretreatment prior to aggregation with other wastewaters (e.g., steam stripping of volatile compounds), or be required to go to other appropriate treatment (e.g., precipitation of metals). The ETC argues that such segregation of nonamenable wastes will promote pollution prevention because companies will have an incentive to modify raw materials or production processes to keep such hazardous constituents out of the waste stream.

C. Summary of the CMA's Position

The full text of CMA's comments can be found in the administrative record for today's rule. This section summarizes that document. CMA describes ''three situations in which characteristically corrosive or ignitable hazardous wastes could be sent to biological treatment in surface impoundments without jeopardizing the treatment units effectiveness by introducing non-amenable compounds''. CMA implicitly requests that the LDR Phase III rule allow CWA-permitted biological treatment in the following three situations:

(a) When the stream to the impoundment only contains hazardous constituents amenable to biological treatment (listed below);

(b) When the stream contains hazardous constituents amenable to biological treatment plus other (nonamenable) constituents present at concentrations equal to some multiple (e.g., 1000) of the F039/UTS treatment standards in the influent to the surface impoundment; or,

(c) The facility can demonstrate on a case-by-case basis that a nonamenable hazardous constituent is amenable to treatment occurring in the treatment system.

CMA identifies most of the organic UTS constituents as ''amenable to biological treatment''. This includes all the constituents for which biological treatment is the basis of the F039 wastewater treatment standards plus a number of organic constituents generally recognized in the literature as biodegradable.

The BDAT List constituents not designated by CMA as ''amenable to biological treatment are: all UTS metals, fluoride, sulfide and the volatile and semivolatile organics in the table that follows.

Nonamenable Volatile Organics

Bromodichloromethane
Carbon tetrachloride
Chloroethane
2-Chloroethyl vinyl ether
Chloroform
Chloromethane
1,2-Dibromoethane
Dichlorodifluoromethane
1,1-Dichloroethane
1,2-Dichloroethane
1,1-Dichloroethylene
trans-1,2-Dichloroethene
1,4-Dioxane
Ethylene oxide
Iodomethane
1,1,1,2-Tetrachloroethane
1,1,2,2-Tetrachloroethane
Tribromomethane (Bromoform)
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethene
Trichloromonofluoromethane
Vinyl Chloride

Nonamenable Semivolatile Organics

Benzal chloride
2-sec-Butyl-4,6-dinitrophenol
p-Chloroaniline
Chlorobenzilate
p-Dimethylaminoazobenzene
1,4-Dinitrobenzene
4,6-Dinitro-o-cresol
2,4-Dinitrotoluene
2,6-Dinitrotoluene
Di-n-propylnitrosamine
Isosafrole
Methapyriline
3-Methylcholanthrene
4,4′-Methylenebis (2-chloroaniline)
5-Nitro-o-toluidine
Phenacetin
Pronamide
Safrole
Methoxychlor

D. Summary of EPA's Preliminary Response to CMA's and ETC's Technical Concerns

EPA presents its preliminary evaluation of three major issues that are raised by both CMA's and ETC's suggestions: the question of feed limits for land-based biological treatment units; behavior of nonamenable constituents in land-based biological treatment units and constituent-specific solubility and toxicity questions.

1. Feed Limits

The CMA and ETC approaches both suggest constituent-specific limitations of decharacterized ICR waste streams entering surface impoundments to ensure that certain toxic constituents do not bypass treatment by volatilizing into the atmosphere, by adsorbing permanently onto sludge sediments at the bottom of the impoundment or by inhibiting biodegradation processes in the impoundment. The Agency agrees that all three of these mechanisms can hinder treatment.

While many aspects of both the ETC and CMA positions have technical and regulatory merit, there appear to be fundamental technical disagreements that need to be resolved. First and primary is the fact that ETC and CMA differ on which constituents (and chemical families of constituents) are ''amenable'' or ''nonamenable'' to treatment. Second, proposing regulations requiring segregation of streams entering impoundments would raise the following issues:

(a) Surface impoundments have traditionally provided an engineering advantage—in addition to low energy, maintenance and construction costs—in that, they offer a means of ''equilibrating'' and ''equalizing'' the relatively frequent variations in chemical compositions of process wastes (i.e., aggregated waste streams). As such, they receive variable wastes in their capacity as large-volume holding units for process upset streams, stormwaters, spill washdown and other unscheduled wastewater releases. Segregation of these various streams would require construction of holding tanks that may not be able to provide the same equalization capability of an impoundment;

(b) Mandatory analyses and separation may impose considerable added expense; and,

(c) EPA, in some cases, assumed that impoundments would be used for these purposes by not including the costs of impoundment replacement when developing effluent guidelines for affected industries.

2. Technical Concern

In theory, EPA agrees that certain RCRA waste streams should be kept out of certain types of Subtitle D impoundments. (Listed wastes already must go to Subtitle C impoundments, and High TOC D001 ignitables, as well as high mercury wastes, are also restricted from Subtitle D impoundments.) In addition, in 55 FR at 22666 (June 1, 1990), EPA presented general criteria that could affect amenable/nonamenable determinations. All parties seem to agree that certain metal-bearing wastes could also be restricted from impoundments. However, there are additional factors that need to be considered, such as impoundment size, depth, temperature, and retention time. (An individual

organic compound is more treatable in some systems than in others and without information about the extent to which the lagoon supports aerobic and anaerobic processes we cannot assess how treatable these constituents are.)

In addition, the overall composition of each waste—i.e. the entire matrix—must be considered in order to characterize its relative amenability to biological treatment. In particular, waste composition can enhance or inhibit a particular organic compound's amenability to biological destruction. Enhancement occurs, for example, if microorganisms can use one compound as a co-metabolite or co-substrate in metabolizing another. A feature story on biological treatment in the February 1993 issue of Environmental Science and Technology reports ''* * * highly chlorinated compounds such as trichloroethylene, 1,1,1-trichloroethane and chloroform will transform under aerobic conditions if methane, phenol or toluene is provided as a primary source of carbon and energy for biological growth. However, these reactions are co-metabolic * * *. Therefore it is important to define exact conditions when discussing biodegradation results.'' Inhibition occurs when one compound poisons the metabolic pathway by which another compound is otherwise degraded. The degree to which the microbial population in the impoundment has been acclimated to a particular constituent is a significant factor in determining that constituent's amenability. Acclimation determines the balance between inhibition and enhancement and is a factor to be defined in discussing biodegradation results.

The fact that ''consortia'' of microorganisms, rather than members of a single bacterial strain, accomplish the degradation of complex molecules further complicates the extent to which a compound can accurately be labeled ''amenable'' (Rittman and Saez in Levin and Gealt Biological Treatment of Industrial and Hazardous Wastes, 1993, McGraw-Hill, New York). The presence of different microorganisms in a consortium increases the number of compounds that can be degraded in that impoundment by virtue of the wider array of metabolic degradation pathways present. However, the various microbial species may require a narrower range of pH, dissolved oxygen and other parameters in order to function and may therefore be more liable to collapse and fail than a simpler more robust microbial strain.

Some of the technical issues that are likely to arise include:

(a) Biotreatment systems vary. Constituents that are amenable to treatment in one system may be nonamenable in another, thus an accurate determination of what is a nonamenable waste might have to consider site-by-site factors, which would present considerable problems in the implementation of the program. If EPA set up a more generic approach, other problems are likely to occur, as described below.

(b) The ETC uses the term ''battery limits'' to describe where nonamenable ICR wastes should be segregated. This term, however, is undefined and could represent the point where the wastestream leaves the production equipment, or a variety of aggregation points.

(c) What levels of constituents justify requiring segregation and recovery?

(d) If EPA required segregation of nonamenable wastes from biological treatment impoundments, there is a very good possibility that facilities would merely replace the surface impoundments with RCRA exempt tanks. Biological treatment in tanks could have the same air emissions unless they are properly controlled.

With respect to specific hazardous organic constituents, EPA is currently investigating whether the BDAT list of compounds could be ordinally ranked into a series of compounds more or less amenable to biological treatment, based on published treatability data. ''Amenability'' is a continuous variable. Treatability data shows that some compounds are more amenable to biological degradation than are other compounds: there are no organic chemicals, other than polymers, which are absolutely resistant to biological degradation.

Due to the technical problems associated with determining which wastestreams should be kept out of certain impoundment lagoons, and the policy concerns raised by these approaches, we are setting out these issues for comment in this proposed rule.

3. Constituent Properties of Concern

The following three items are criteria ETC suggests in addition to individual constituent concentrations. EPA invites comments on means of managing these waste properties.

a. Water solubility. EPA does not share ETC's concern that less soluble compounds are significantly less amenable to biological treatment than relatively hydrophilic compounds. For example, PCB's are virtually insoluble; nevertheless the literature documents cases where PCB's have been successfully degraded to hydrochloric acid, carbon dioxide and water.

b. TC Metals. EPA believes the LDR Phase IV limitations on land disposal of wastes that meet the definition of toxicity based on their metals concentration will address ETC's and CMA's concerns about the inadequacy of surface impoundments for metal treatment.

c. Toxicity. EPA solicits comments on the suggestion that P-waste constituents be managed as particularly toxic and thus likely to poison metabolic pathways in the degradation process. EPA further solicits comment on additional constituents or categories of constituents that are likely to be acutely toxic to biological treatment processes, rather than merely resistant to biological treatment.

The target mass removal approach described earlier in this preamble can be applied to biological treatment units to determine whether constituents managed in the units are being effectively degraded. The application of this approach could address the question of wastes nonamenable to biotreatment. The target mass removal approach requires a waste determination prior to the waste entering the treatment unit, and either (1) a waste determination after treatment in the unit, or (2) a determination of the operating efficiency of the treatment unit. This approach has been applied to biotreatment units for at least two promulgated standards that regulate hazardous organic chemicals: the HON and the Subpart CC air rules. Comments are solicited on the approach to address the nonamenable waste concerns.

F. Additional Issues

In addition to the issues raised in the section ''Summary of EPA's Preliminary Response'' above, there are other technical issues arising in developing a list of UTS constituents that are not amenable to biological treatment. Another issue concerns those UTS constituents for which biological treatment is BDAT: could a wastestream containing such constituents have such a high concentration of other compounds known to be refractory to biological treatment that biotreatment no longer effectively treats the constituents? A third issue considered here is the extent to which ''nonamenable'' constituents evade treatment by volatilizing into the air or by adsorbing onto sludge, in addition to flowing out untreated in effluent.

1. List of Hazardous Constituents

In order to ensure that all the constituents in a decharacterized waste

are adequately addressed, the starting point should not be the BDAT list but rather the entire list of U and P, appendix VIII, and other toxic chemicals present in the hazardous waste universe. The next LDR rulemaking (''Phase IV'') will discuss the universe of hazardous constituents regulated by RCRA (i.e., a composite of the above lists) and may propose which constituents from the composite list are considered ''nonamenable'' or ''amenable''. Today's preamble, however, raises general issues associated with ''amenability'' in order to solicit comments on specific questions. These questions will be addressed in LDR Phase IV. For example, the Phase IV proposed rule may include a discussion of quantification problems and the use of surrogate parameters such as BOD/COD/TOC ratios to assist in measuring performance where analytical methods do not exist.

2. Biotreatment as BDAT

EPA has already promulgated biodegradation (BIODG) as a specified method of treatment for quite a few U and P waste codes that fall under the category that ETC has asked to be classified as ''nonamenable''. (For example, nitrosamines easily break down in water to nitroamines. Nitrogen-containing organics can typically be biodegraded. Most microorganisms flourish in the presence of nitrogen containing chemicals.) EPA has also established numerical standards for many chemicals based on biotreatment data. EPA is including all of the chemicals in both of these cases in this proposed rule and is asking for comment on them and seeking data that would refute or support that biotreatment is BDAT for these chemicals.

3. Toxics Along for the Ride

EPA intends that the Phase IV proposed rule will expand the discussion on the concept of ''toxics along for the ride'' in biotreatment (i.e., concern about how best to regulate those toxic compounds that are not degraded to less toxic compounds and consequently pass untreated through the unit and on to land disposal). While the concept is environmentally attractive, in order to create a regulatory construct prohibiting such constituents from biotreatment, the Agency must consider the following constituent-specific factors:

(a) Is the elemental composition of the chemical such that it is truly not ''amenable to biotreatment'' such as for metals?

(b) Does a low rate of hydrolysis indicate low biodegradability?

(c) Does high volatility necessarily indicate low biodegradability?

(d) What retention time is required for biodegradation?

(e) Is the biological system responsible for degradation of the compound sensitive to upsets in either the chemistry of the impoundment or its biocomposition?

(f) Is the bioactivity considered ''aggressive''?

(g) Is the constituent actually chemically treated in the impoundment?

(h) Will the constituent encounter treatment after the impoundment?

(i) Is the waste containing the constituent difficult to segregate from other wastes?

(j) Does the chemical occur naturally in the surrounding soil or water?

(k) Is the chemical already present in the sludge and could then be released by the sludge even though the influent is reduced?

(l) Is the chemical present in other nonhazardous waste that are commingled with the decharacterized wastes?

(m) Is the chemical generated at concentrations below that which is considered neither a chronic nor an acute health risk?

(n) Is there an ecological risk from the inorganic composition of the waste such as the high salinity (dissolved solids) of most D002 wastes?

(o) Is the chemical a surprise presence from the use of some product that contains trace levels that couldn't be measured when the product was used (below product specifications)?

(p) Is the chemical appearing due to corrosion of pipes and equipment?

G. Treatment Standard for Wastes With a High Concentration of Organics

In the Phase II final rule (59 FR 47982, September 19, 1994), EPA finalized regulations prohibiting the disposal in Class I nonhazardous waste injection wells ignitable characteristic wastes with a high total organic carbon (TOC) content and toxic characteristic pesticide wastes, unless either the well is subject to a no-migration determination, or the wastes are treated by the designated the LDR treatment method. The treatment method promulgated was either combustion (i.e. incineration or fuel substitution) or recovery of organics. Today the Agency is raising the option of proposing the same treatment standard for characteristic wastes with high concentrations of organics managed in surface impoundments. This would result in a prohibition of these wastes going into biological impoundments.

The Agency requests comment on this option, including the question of how to define ''high'' levels of organics that would justify prohibition from surface impoundments. The Agency believes this option provides many of the benefits of segregation of refractory ''nonamenable'' streams with significantly lower analytical requirements.

VI. Treatment Standards for Newly Listed Wastes

A. Carbamates

Hazardous Wastes from Specific Sources (K Waste Codes)

K156—Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.

K157—Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.

K158—Bag house dust, and filter/separation solids from the production of carbamates and carbamoyl oximes.

K159—Organics from the treatment of thiocarbamate wastes.

K160—Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbonate wastes.

K161—Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust, and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126.)

Acute Hazardous Wastes (P Waste Codes)

P203 Aldicarb sulfone
P127 Carbofuran
P189 Carbosulfan
P202 m-Cumenyl methylcarbamate
P191 Dimetilan
P198 Formetanate hydrochloride
P197 Formparanate
P192 Isolan
P196 Manganese dimethyldithiocarbamate
P199 Methiocarb
P190 Metolcarb
P128 Mexacarbate
P194 Oxamyl
P204 Physostigmine
P188 Physostigmine salicylate
P201 Promecarb
P185 Tirpate
P205 Ziram

Toxic Hazardous Wastes

U394 A2213
U280 Barban
U278 Bendiocarb
U364 Bendiocarb phenol
U271 Benomyl
U400 Bis(pentamethylene)thiuram tetrasulfide

U392 Butylate
U279 Carbaryl
U372 Carbendazim
U367 Carbofuran phenol
U393 Copper dimethyldithiocarbamate
U386 Cycloate
U366 Dazomet
U395 Diethylene glycol, dicarbamate
U403 Disulfiram
U390 EPTC
U407 Ethyl Ziram
U396 Ferbam
U375 3-Iodo-2-propynyl n-butylcarbamate
U384 Metam Sodium
U365 Molinate
U391 Pebulate
U383 Potassium dimethyl dithiocarbamate
U378 Potassium n-hydroxymethyl-n-methyldithiocarbamate
U377 Potassium n-methyldithiocarbamate
U373 Propham
U411 Propoxur
U387 Prosulfocarb
U376 Selenium, tetrakis (dimethyldithiocarbamate)
U379 Sodium dibutyldithiocarbamate
U381 Sodium diethyldithiocarbamate
U382 Sodium dimethyldithiocarbamate
U277 Sulfallate
U402 Tetrabutylthiuram disulfide
U401 Tetramethylthiuram monosulfide
U410 Thiodicarb
U409 Thiophanate-methyl
U389 Triallate
U404 Triethylamine
U385 Vernolate

For background information on waste characterization data, data gathering efforts, and applicable technologies, see the Best Demonstrated Available Technology (BDAT) Background Document for Newly Listed or Identified Wastes from the Production of Carbamates and Organobromines.

1. Proposed Treatment Standards

The Agency has promulgated the listing of the wastes from the carbamate industry specified above. The final listing was signed by the administrator on January 31, 1995, and published in the **Federal Register** on February 9, 1995. EPA is today proposing concentration-based treatment standards for these wastes. The concentration limits for the regulated constituents are based on both existing and newly proposed UTS (59 FR 47982, September 19, 1994). UTS standards have already been promulgated for 21 of the constituents of concern for these waste codes (16 organic constituents and 5 metals). These standards were promulgated in the LDR Phase II final rule and are based on the following technologies: (1) Incineration was the primary basis for organic constituents in nonwastewaters; (2) biological treatment or carbon absorption was the basis for organics in wastewaters; (3) high temperature metal recovery and stabilization were the basis for metals in nonwastewaters; and (4) chemical precipitation was the basis for metals in wastewaters. These treatment standards were developed by examining essentially all the BDAT treatment data the Agency had at the time.

The Agency is proposing new UTS for 42 constituents associated with carbamate wastes. 40 of these constituents are chemicals produced by this industry which may be grouped into the following categories: carbamates and carbamate intermediates, carbamoyl oximes, thiocarbamates, and dithiocarbamates. Please refer to the Background Document for definitions of these chemical groups and the categorization of these 40 chemicals. The other 2 constituents for which new UTS are being proposed (triethylamine, and o-phenylene diamine) are not carbamate products, but are hazardous constituents present at levels of regulatory concern in carbamate wastes. Note that although specific dithiocarbamate chemicals have been added to Appendix VII and VIII, the basis for listing K161, and the waste descriptions of P196, P205, U277, U366, U376–379, U381–384, U393, U396, U400–U403, and U407, the regulated constituent for these chemicals and codes is specified as ''Dithiocarbamates (total)'', because the analytical method for dithiocarbamates does not distinguish among specific dithiocarbamate constituents.

The Agency is proposing to base the UTS for the carbamate, carbamate intermediate, carbamoyl oxime, dithiocarbamate, and thiocarbamate constituents in wastewaters on data developed by the Office of Water for the development of effluent guidelines, and data from treatability studies performed by RREL. Wastewater standards for carbamate and carbamoyl oxime constituents are based on data from alkaline hydrolysis, with the exception of thiodicarb which is based on biological treatment. Wastewater standards for thiocarbamates are based on GAC adsorption, while wastewater standards for dithiocarbamates are based on ozone/UV light oxidation. In cases where data were not available for a specific constituent, the standard has been transferred from the constituent with the most similar chemical structure and properties.

The Agency is proposing to base the UTS for the carbamate, carbamate intermediate, carbamoyl oxime, thiocarbamate, and dithiocarbamate constituents in nonwastewaters on analytical detection limits compiled from sampling and analysis reports prepared to support the proposed listing for these wastes. Although data from the treatment of these constituents in nonwastewater matrices is not currently available, the thermal destruction technologies currently employed to treat these nonwastewaters can routinely achieve destruction to levels below the detection limit.

In addition, the Agency is proposing UTS standards for triethylamine based on data transferred from the treatment of methapyrilene. The treatment standards for methapyrilene are 0.081 mg/l for wastewaters and 1.5 mg/kg for nonwastewaters. Methapyrilene was selected as the basis for this data transfer because it is the only tertiary amine for which UTS standards have been promulgated.

Finally, the Agency is proposing UTS standards for o-phenylenediamine based on analytical detection limits compiled from sampling and analysis reports prepared to support the proposed listing for these wastes. For the treatment standards being proposed today for waste codes K156–161, P127, P128, P185, P188–192, P194, P196–199, P201–205, U271, U277, U279, U280, U364–367, U372, U373, U375–379, U381–387, U389–396, U400–404, U407, U409–411, see § 268.40 table—Treatment Standards for Hazardous Wastes in the proposed amendments to the regulatory language.

2. Request for Comments

In the LDR Phase II rule establishing UTS, the Agency was able to make modifications to the proposal, where commenters submitted data. The Agency strongly encourages parties affected by these proposed standards to submit any available treatment data for these newly regulated constituents; if such data become available, the Agency will make appropriate adjustments to these proposed standards. The Agency is soliciting comments, technical descriptions, and performance data regarding the characterization and treatability of these wastes and the achievability of these proposed standards. EPA is especially interested in any information regarding the feasibility of product recovery for these wastes, any available treatment data for the new constituents being added to the list of UTS, detection limits for these constituents in treatment residues, and suggestions for specified methods which could be alternatives to the concentration based standards proposed today.

Because standards for organics are based on treatment of organic constituents to non-detect levels, EPA solicits comment on the use of constituent specific detection levels used during the testing of these wastes for purposes of the listing

determination. The Agency recognizes that there may be differences between detection limits prior to and after treatment. Detection levels may be lowered for these wastes after treatment due to the ''cleaner'' matrix. This data has been placed in the docket for today's proposed rule.

B. Organobromines

K140—Waste solids and filter cartridges from the production of 2,4,6-tribromophenol.
U408—2,4,6-Tribromophenol

For further information on waste characterization data, data gathering efforts, and applicable technologies, see the Best Demonstrated Available Technology (BDAT) Background Document for Newly Listed or Identified Wastes from the Production of Carbamates and Organobromines.

1. Proposed Treatment Standards for Organobromine Wastes

EPA proposed to add 2,4,6-Tribromophenol to Appendix VIII of Part 261 on May 11, 1994, and is today proposing to add this constituent to the list of UTS in 40 CFR 268.48. The decision to add 2,4,6-tribromophenol to appendix VIII was based on the determination that the toxicities of this chemical and its chlorinated analogue, 2,4,6-Trichlorophenol, are essentially the same, due to the Quantitative Structure Activity Relationship (QSAR) between these two compounds.

Since treatment data is not currently available on 2,4,6-tribromophenol, the Agency is proposing to set the UTS for 2,4,6-tribromophenol based on data transferred from the treatment of 2,4,6-trichlorophenol. The structures of 2,4,6-tribromophenol and 2,4,6-trichlorophenol are sufficiently similar to be considered halogenated congeners of phenol. Both halogenated phenols contain three symmetrically placed bromine or chlorine substituents which are difficult to remove by chemical substitution. The chemical behavior and mechanisms of action for 2,4,6-tribromophenol is expected to be similar to its chlorinated analogue, 2,4,6-trichlorophenol. Thus, the Agency is proposing UTS standards of 7.4 mg/kg for nonwastewaters and 0.035 mg/l for wastewaters for 2,4,6-tribromophenol.

The Agency is soliciting comment regarding the achievability of this standard by demonstrated available technologies and regarding the analytical detection limit of 2,4,6-tribromophenol in treatment residual matrices. The Agency is also soliciting any available data on the concentrations 2,4,6-tribromophenol in treatment residuals from the recovery or destruction of wastes containing 2,4,6-tribromophenol. The analytical method for 2,4,6-Tribromophenol is SW846 method 8270 (GC/MS for semivolatiles, capillary column).

2. Applicable Technology

The lone facility which produces 2,4,6-tribromophenol wastes uses a Bromine Recovery Unit (BRU) to recover bromine values from organic liquid and vapor waste streams. In this unit, the organics are burned and the combustion products are removed by a wet scrubber. The BRU is a halogen acid furnace which meets the regulatory definition of industrial furnace in 40 CFR 260.10. The combustion of hazardous waste in industrial furnaces is regulated under 40 CFR part 266, subpart H, which regulates air emissions from these units and requires monitoring and analyses. The facility which produces 2,4,6-tribromophenol burns listed spent solvents and still bottoms in this BRU; therefore, it is already subject to the performance standards of part 266, subpart H. Treatment of 2,4,6-tribromophenol wastes in the BRU should be effective in destroying the phenolic component of 2,4,6-tribromophenol and providing for recovery of bromine. Based on available information, EPA proposes that treatment by BRU is BDAT for 2,4,6-tribromophenol wastes. EPA solicits comment on this assertion and on the potential applicability of other technologies which destroy 2,4,6-tribromophenol and provide recovery of bromine.

C. Aluminum Potliners (K088)

K088—Spent potliners from primary aluminum reduction.

For background information on waste characterization, see the Best Demonstrated Available Technology Background Document (BDAT) for Newly Listed or Identified Wastes for K088, Spent Aluminum Potliners.

1. Possible Determination of Inherently Waste-Like

Certain current and potential K088 management methods have features of both recycling and conventional treatment. For example, there are a number of management methods involving some type of combustion process that produce a treatment residue from which resources may be recovered and reused. These management methods either destroy or drive off cyanides and toxic organics. Nevertheless, the technologies may useful alternative management methods for K088 if valuable resources are recovered. The Agency has a long-standing preference for recovery over simple treatment. This position is based on the preference in RCRA for environmentally protective recovery versus waste treatment. Any consideration of relative safety must include not just the recovery step, but transport and storage preceding recovery, and proper management of all residues from recovery. RCRA section 1003(a)(6) as well as S. Rep. No. 284, 98th Cong. 2d sess. at 17.

EPA is considering how best to balance the potential promise of spent potliner recovery technologies with their similarities to conventional treatment technologies, especially with respect to the fate of (and risks generated by) hazardous constituents present in the waste. The Agency would prefer to provide consistent regulatory requirements for these recovery as well as for conventional treatment technologies in order to ensure both safe recovery and treatment. However, the existing regulatory framework may make it difficult to achieve this objective. For example, many of these recovery technologies already could be subject to the existing regulations for industrial furnaces burning hazardous waste (the so-called BIF rules).[10] See 56 FR at 7142 (Feb. 21, 1991); 50 FR at 49171-174 (Nov. 29, 1985).

For K088 recovery technologies subject to BIF regulations, only those facilities in existence on the effective date of the BIF rules (August 21, 1991) could operate without first obtaining a permit. This could create a significant barrier to commercial operation of the technology in the near term. If, however, these units operate in a manner that does not subject them to the BIF regulations, then it is possible that they could operate with little or no oversight under RCRA.

The regulatory classification of residues as hazardous or nonhazardous wastes is another area where there would be dissimilar requirements under current rules. For example, one company has obtained from EPA a delisting determination that residues from their conventional treatment process are at levels low enough to no longer be classified as listed hazardous wastes. Other companies have not obtained such determinations, even though they potentially could treat spent potliners to delisting levels. As a result, these companies face the cost

[10] Because the Agency is not fully aware of all of the details of some of the projected potliner treatment/recovery technologies, we cannot state at this time whether the technologies will meet the regulatory definition of an industrial furnace. It should be noted that processes recovering both energy and material values from a waste are subject to BIF rules, and energy recovery in an industrial furnace need not involve any export of energy).

and time of seeking a delisting petition, or the cost disadvantage of disposal of all residuals as hazardous waste.

Because of the similarities in risks, EPA is soliciting comment on whether there are ways to subject all of these technologies to the same, or nearly the same, regulatory requirements, while assuring that the ultimate goals of protecting human health and the environment are not compromised. The Agency has discussed with aluminum industry representatives the possibility of achieving this objective by designating spent aluminum potliners as inherently waste-like materials pursuant to 261.2(d),[11] and using this designation as a triggering event for a determination of ''substantial confusion'' pursuant to 270.10(e)(2), which could establish a date for eligibility for interim status after August 21, 1991. See generally 56 FR at 7142 making this type of designation and finding of ''substantial confusion'' for halogen acid furnaces. The Agency solicits comment on this possibility. The benefit of this approach would be to guarantee that these technologies all would be subject to a minimum level of RCRA oversight, especially with respect to design of storage equipment, control of air emissions from the process, minimum treatment standards for residuals, and mandatory corrective action in response to releases of hazardous constituents to the environment.

In order to mitigate some of the potential delay and costs in complying with RCRA, EPA also requests comment on the feasibility of establishing uniform delisting levels for residues from processing spent potliners, much as it did for residues from processing K061 wastes in high temperature metal recovery furnaces. Under this approach, we believe, levels would need to be established for organics, metals, cyanide and fluoride.

Another possibility for assuring safe processing of the potliners would be to develop air emission standards for the processing units pursuant to section 112(d) of the Clean Air Act. This alternative would have to be implemented in such a way as to assure proper management of the potliners before processing, and satisfactory treatment and management of residues from the processing. EPA solicits comment on all of these issues.

EPA wishes to add that its Region 10 office and the Washington State Department of Ecology have already evaluated the spent potliner recovery process used by one vender (Enviroscience). Washington State determined that it is an excluded recycling process, and EPA Region 10 determined that the process is not required to meet emission standards for BIFs, provided the process is conducted pursuant to certain conditions.[12] In light of the existing industry reliance on this determination, any decision made regarding designation of spent potliners in this rulemaking would not change the specific decisions concerning the Enviroscience process that have been completed to date.

2. Overview of Today's Proposal

EPA is proposing treatment standards for K088 expressed as the maximum concentration of specific constituents that would be allowed for land disposal. The tables at the end of this section summarize the constituents proposed for regulation and the maximum allowable concentrations. These maximum concentrations are the UTS for metals, cyanides, and other organics that were developed in the LDR Phase II final rule. These standards are based on a variety of technologies as follows: (1) Alkaline chlorination was the basis for the cyanide wastewater standards; (2) alkaline chlorination of the wastewater to destroy the cyanide prior to the generation of the nonwastewater residual was the basis for the cyanide nonwastewater standard; (3) incineration was the primary basis for other organic constituents in nonwastewaters; (4) biological treatment or carbon absorption was the basis for organics in wastewaters; (5) high temperature metal recovery and stabilization were the basis for metals in nonwastewaters; (6) chemical precipitation was the basis for fluorides and metals in wastewaters; and (7) immobilization through either vitrification or the addition of calcium as a stabilization reagent was the basis for fluorides in nonwastewaters.

These treatment standards were developed by examining essentially all the BDAT treatment data the Agency had at the time. The Agency is also proposing new nonwastewater treatment standards based on leachate tests for fluoride. The leach tests must be conducted using the TCLP (SW–846 Method 1311 as described in 40 CFR Part 261, Appendix II). These leach standards were developed by the Agency when granting a delisting for certain K088 wastes. The treatment standard for fluoride wastewaters is taken from the UTS promulgated in the LDR Phase II final rule. More information on the development of these treatment standards can be found in the docket to today's rule.

Treatment and recycling technologies such as mineral wool cupolas, metallurgical processes, iron and steel industrial furnaces, and other recovery and recycling technologies should be able to meet the proposed standards. K088 treatment data from Reynolds Metals, Comalco Aluminum Ltd., Ormet Corporation and the EPA Combustion Research Facility (CRF) show that K088 can be treated to meet the UTS. Because EPA is proposing numerical treatment standards, any recycling or treatment technologies can be used as long as the treatment standards are met by actual treatment, rather than impermissible dilution. More discussion on these various technologies is presented later in this preamble.

a. Proposed Regulated Constituents. EPA is proposing to regulate the following constituents: acenapthene, anthracene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(g,h,i)perylene, chrysene, dibenz(a,h)-anthracene, fluoranthene, indeno(1,2,3-cd)pyrene, phenanthrene, pyrene, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, cyanide and fluoride. Based on the available waste characterization data (see Best Demonstrated Available Technology Background Document (BDAT) for Newly Listed or Identified Wastes for K088, Spent Aluminum Potliners found in the docket to this rule for details), these constituents were found to be present in either the untreated K088 wastes or in the K088 treatment residuals at levels exceeding the UTS. See the proposed delisting of K088 for Reynolds Metals at 56 FR 33004 and 33005, July 19, 1991, and the corresponding docket for that

[11] The basis for such a designation would be that spent potliners contain cyanides and polyaromatic hydrocarbons which are destroyed rather than recycled, even by recovery technologies. These hazardous constituents are present in concentrations not ordinarily found in raw materials or products for which the spent potliners would be substituting, and the spent potliners could pose a substantial hazard to human health and the environment when recycled. The combustion process itself, for example, would seem to pose all of the risks the BIF rule is intended to address. Past storage practices for spent potliners also have led to significant environmental damage (although much of this storage utilized open piles).

A designation of inherently waste-like, incidentally, would only apply to the potliners and not to legitimate products obtained by processing the potliner (so long as those products were not burned as fuels or used directly on the land). 56 FR at 7141. Another option, therefore, would be to designate the use of K088 in certain types of recycling (e.g., all processes involving thermal destruction of cyanide, processes that incorporate cyanide/PAHs into product unchanged) as inherently waste-like.

[12] These evaluations were conducted at the express, voluntary request of Enviroscience.

rulemaking. See also the docket for today's proposal for more data on constituent concentrations in untreated and treated K088. EPA is specifically requesting comment on regulating the phthalates: bis (2-ethylhexyl) phthalate, di-n-butyl phthalate and di-n-octyl phthalate. These constituents can show up in the untreated potliner and the treated residue; however, there is some question that their presence may simply be due to lab contamination.

Treatment technologies for K088 are also designed to recover or stabilize the fluoride. Therefore, EPA is proposing to regulate fluoride in K088 in order to ensure that the fluoride is actually recovered or that it is properly treated. Fluoride is also being regulated because of its toxicity and the high concentrations found in untreated K088 (see Tables 2 and 3 in 56 FR 33004 (July 19, 1991)—the proposed delisting of K088 generated by Reynolds Aluminum Company). If a treatment standard is promulgated for fluoride, the Agency will add fluoride to the UTS for K088. EPA has some data on the toxicity of fluoride (see the docket for today's proposed rule), and is in the process of gathering more information. For more information on regulated constituents see the Best Demonstrated Available Technology Background Document (BDAT) for Newly Listed or Identified Wastes for K088, Spent Aluminum Potliners found in the docket to this rule.

Section 3004(d)(1), (e)(1), and (g)(5) require that land disposal of hazardous wastes is prohibited unless a prohibition is no longer warranted to protect human health and the environment. EPA reads this language to require that land disposal may still be prohibited after treatment of hazardous constituents if the waste might still pose substantial hazards due to presence of other constituents or properties. 56 FR at 41168 (August 19, 1991); *NRDC* v. *EPA*, 907 F. 2d 1146, 1171–72 (D.C. Cir. 1990) (dissenting opinion). These hazards could be posed due to lack of treatment of other constituents in the waste, in this case, fluoride. It should be noted that this action is consistent with previous Agency actions, since EPA regulated fluoride in the delisting granted to treatment residues from the Reynolds Metals treatment process, and also regulates discharge of fluorides in the CWA effluent limitation guidelines for the primary aluminum subcategory. Consequently, the Agency is proposing a treatment standard for fluoride to assure that ultimate disposal of treated K088 is protective.

EPA is proposing treatment standards for fluoride, as well as the hazardous constituents contained in the waste. Flouride is present in these wastes in very high concentrations: upwards of 10%. Untreated concentrations of this magnitude can cause significant adverse effects to human health and the environment if improperly land disposed. The Agency requests comment on whether fluoride should be added to Appendix VIII, as well.

b. Specific Companies Investigating K088 Recovery/Treatment Technologies. It has been mentioned earlier that there are numerous technologies either available or being developed that recycle or recover the value (carbon, fluoride, etc.) in K088. Some of these technologies are described below. This is by no means a comprehensive discussion on those technologies, but rather is intended to give the public some idea of treatment options that are, or may be, available. These technologies or companies are only those of which the Agency has been made aware. EPA has placed in the RCRA Docket of this proposed rule all the recycling/ treatment studies, as well as literature and videos submitted to the Agency on the various technologies. The EPA requests comment and data on these technologies and any other recycling or recovery technologies applicable to K088.

- Enviroscience, Inc. (ESI) has completed a pilot plant demonstration sponsored by Kaiser Aluminum, Vanalco and Columbia Falls Aluminum Company. Their process uses K088, K061 (electric arc furnace dust) and F006 (electroplating sludges) to produce zinc oxide, mineral wool fiber and pig iron. The K088 is first formed into briquettes and then heated to approximately 3000 F in a furnace, with lime and silica being added to attain an optimal acid:base ratio for proper fiber formation. The carbon and the cyanide from the potliner are used to reduce the metals in the K061 and F006. The non-reducible metal oxides are spun into a mineral wool from the molten slag.
- Alcan International Limited has developed a Low Caustic Leach and Liming hydrometallurgical process to treat K088. This process converts the fluorides to acid grade fluorspar and recovers the sodium and aluminum as sodium aluminate and caustic feed to be used in aluminum smelter operations. Alcan claims that the remaining brick and carbon fraction constitutes a high ash solid fuel whose reduced sodium content enhances its value as a chemical reducing agent.
- Ormet Corporation has used a pilot-scale melting system vitrification process to treat K088 wastes. The process involves the rapid suspension heating of the waste and other additives in a preheater prior to physical and chemical melting which occur within a cyclone reactor. Ormet has submitted a petition to the EPA requesting a delisting of their residues from this process. They intend to scale-up this plant upon receiving a delisting of their waste. They claim the process produces a nonhazardous reusable product with the qualities of industrial glass that can be used as glass insulation material, roofing shingle granules or in the manufacture of tiles.
- Comalco Aluminum Ltd. (CAL), an Australian company, has developed the Comtor process, which is a full-scale calcination process which thermally destroys the cyanide in K088. This process also recovers the fluoride and carbon values in K088 by using hydrometallurgical techniques with lime dewatering. The precipitate can be used as a fluxing agent or in cement making. The caustic liquor may be recycled to the alumina plant or can be used as a scrubbing agent. Comalco has plans to upgrade their plant to 10,000 ton/yr and build a second plant in New Zealand. They have a licensing agreement with Aisco Systems of Canada to commercialize the technology.
- Elkem Technology is a Norwegian company which has done bench-scale testing consisting of smelting K088 along with iron ore to produce pig iron and a slag which they hope to get delisted. The process uses the carbon in K088 to act as a reducing agent and destroy the cyanides and other toxic organics, while rendering all other constituents immobile in a glassified, inert slag. For each ton of K088, they produce 0.85 ton of iron. Elkem plans a demonstration plant in the U.S. next year. They also plan to pilot a process to recover fluoride from the molten slag.
- Ausmelt Limited is an Australian company which has performed pilot scale tests using their submerged lance technology, which is a pyrometallurgical process, to destroy the toxic constituents in K088 and produce a stable slag. Fluorides are recovered for re-use in the aluminum smelting process. Ausmelt has plans to build a facility which could process approximately 15,000 tons per year of K088.

For more specific information on these technologies, see the Best Demonstrated Available Technology Background Document (BDAT) for Newly Listed or Identified Wastes for K088, Spent Aluminum Potliners.

For the treatment standards being proposed today for K088, see § 268.40 table— Treatment Standards for

Hazardous Wastes in the proposed amendments to the regulatory language. For performance data supporting these standards, see the aforementioned K088 Background Document.

VII. Improvements to the Existing Land Disposal Restrictions Program

A major part of today's rule is designed to improve the quality and efficiency in the LDR program. Areas that are addressed in this proposed rule include: Completion/adjustments to UTS and expansion/consolidation of certain required methods of treatment.

A. Completion of Universal Treatment Standards

Today's rule proposes further streamlining and simplification of the LDR treatment standards based on the UTS promulgated in the LDR Phase II final rule (59 FR 47982, September 19, 1994). The proposed modifications apply to: (1) all UTS and therefore to all hazardous wastes regulated with numerical treatment standards included in the UTS as summarized in the Consolidated Standards Table at § 268.40, and (2) the numerical treatment standards proposed for carbamate, organobromine and spent aluminum potliner wastes. These proposed changes to UTS therefore extend to all F-, K-, U- and P- waste codes with individually regulated constituents plus ignitable, corrosive, reactive and characteristically toxic wastes with underlying hazardous constituents.

1. Expansion to Cover All Components of Newly Listed Wastes (Carbamates and Organobromines)

A number of constituents regulated with numerical treatment standards in certain waste codes are not represented in UTS. EPA lacked adequate data to cover all the BDAT List with UTS in the LDR Phase II final rule and today the Agency is proposing numerical treatment standards for additional constituents in carbamate and organobromine wastes which are not yet on the current BDAT List. These 43 constituents are:

A2213
Aldicarb sulfone
Barban
Bendiocarb
Bendiocarb phenol
Benomyl
Butylate
Carbaryl
Carbenzadim
Carbofuran
Carbofuran phenol
Carbosulfan
Cycloate
Dimetilan
Dithiocarbamates (total)
EPTC
Formetanate hydrochloride
Formparanate
m-Cumenyl methylcarbamate
Isolan
Methiocarb
Methomyl
Metolcarb
Mexacarbate
Molinate
Oxamyl
Pebulate
o-Phenylenediamine
Physostigmine
Physostigmine salicylate
Promecarb
Propham
Propoxur
Prosulfocarb
Diethylene glycol, dicarbamate
Thiodicarb
Thiophanate-methyl
Tirpate
Triallate
2,4,6-Tribromophenol
Triethylamine
3-Iodo-2-propynyl n-butylcarbamate
Vernolate

The proposed UTS for these constituents can be found in § 268.48 of today's proposed rule.

2. UTS for Constituents in Wastewater and Nonwastewater Forms

For a number of constituents, there exist UTS in wastewater forms of wastes but none in nonwastewaters. EPA believes that these constituents should be controlled in both sets of waste streams associated with a given waste code. This enhances consistent and complete treatment. The organic constituents for which EPA has promulgated wastewater UTS but no nonwastewater UTS include acrolein, 4-aminobiphenyl, aramite, chlorobenzilate, 2-chlorovinylethyl ether, 1,2-diphenylhydrazine, ethylene oxide, methyl methanesulfonate, p-dimethylaminoazobenzene, and 2-naphthylamine.

Today's rule requests comment on potential UTS values for these constituents in nonwastewaters. Although EPA does not have definitive treatability data on hand at the time of proposal, EPA believes that nonwastewater UTS for these constituents would close gaps in the current LDR framework and ensure adequate treatment of all waste streams.

a. Nonwastewaters.

(i) The Environmental Technology Council Data. EPA is soliciting comment on the treatment standards originally proposed, but not promulgated, in the Third Third F039 standards for acrolein, 4-aminobiphenyl, chlorobenzilate, p-dimethylaminoazobenzene, aramite, and 2-naphthylamine. EPA had withdrawn these as constituents of nonwastewater forms of F039 following comments from the ETC that these were analytically problematic. Specifically, in a study reporting detection limits and spike recoveries in incinerator ash from the combustion of hazardous wastes (as analyzed by six different laboratories), ETC reported anomalous levels of detection limits or spike recoveries for these compounds. Detection limits and spike recoveries are of concern because the numerical treatment standard for any constituent in incinerator ash is equal to the product of the detection limit times the accuracy correction factor, the inverse of the percent recovery times a variability factor representing the extent of the data.

ETC reported detection limits and percent recovery values for acrolein, p-dimethylaminoazobenzene (p-DAB), 4-aminobiphenyl (4AB), aramite, chlorobenzilate (CB), methylmethanesulfonate (MMS) and 2-naphthylamine (2NA), and also for dibenzo(a,e)pyrene (DBP). The detection limit results are labeled LIMITS A–F to represent the six different laboratories and the percent recovery results are similarly labeled % REC A–F to represent the six different laboratories. These data, together with the complete ETC investigations for the Third Third proposed rule and the subsequent pesticide study are available for inspection in the RCRA Docket for the LDR Phase II final rule.

TABLE 1.—DETECTION LIMITS

Limit	Constituent							
	Acrolein	p-DAB	4-AB	Aramite	CB	DBP	MMS	2-NA
A	0.029	1.82	6.94	17.18	4.87	9999	2.438	12.561
B	9999	3.2	9999	614.43	8.29	9999	1.85	26.82
C	0.161	9.43	26.89	243.05	7.98	18.72	2.3	6.96
D	9999	1.38	14.06	4.52	2.61	9999	0.75	2.214

TABLE 1.—DETECTION LIMITS—Continued

Limit	Constituent							
	Acrolein	p-DAB	4-AB	Aramite	CB	DBP	MMS	2-NA
E	9999	48.26	0.065	2.37	11.34	9999	9999	2.43
F	9999	1.78	14.18	9999	10.53	9999	1.37	9999

TABLE 2.—PERCENT RECOVERY

% Rec	Constituent							
	Acrolein	p-DAB	4-AB	Aramite	CB	DBP	MMS	2-NA
A	1.6	36	13.661	5.47	138.04	0	50.7	8.77
B	0	118.87	473.41	79.23	175.85	0	63.54	125.48
C	1.954	40.77	34.95	120.34	105.99	27.34	100.38	18.73
D	0	126.74	1.69	0.11	160.43	0	74.11	3.98
E	0	134.65	31.54	80	247.725	0	0	8.89
F	0	558.13	17.55	330.24	436.82	0	33.31	3.08

Although ETC reports relatively few detection limits for acrolein, the consistently problematic low recoveries, all below 2% were the basis of EPA's concern in the Third Third rule. Similarly, dibenzo(a,e)pyrene exhibits extremely and consistently low recoveries while several detection limits are missing from the report. Aramite exhibited several extremely high detection limits plus an erratic set of percent recoveries ranging from very high to very low. The other four constituents, p-dimethylaminoazo-benzene, 4-aminobiphenyl, chlorobenzilate and 2-naphthylamine show a pattern of generally high detection limits and high recoveries, with much variation in recoveries and with several significantly high values in each set. The methylmethanesulfonate data were supplied by ETC despite the fact that EPA did not propose a nonwastewater standard for this constituent in the Third Third rule; this data is presented here for completeness and to stimulate comment on the development of today's proposed methylmethanesulfonate nonwastewater standard discussed below.

(ii) EPA's Treatability Data Detection Limits and Recoveries. High or erratic detection limits and recoveries are of concern to EPA. For both parameters, high values indicate a barrier to quantification and erratic values indicate unreliable quantification.

Analysis of the fourteen EPA incinerator burns used to generate nonwastewater treatability data shows both a narrower range of detection limits and lower values of detection limits than the ETC study achieved. The following table presents the ranges of detection limits achieved.

In generating treatability data for listed hazardous wastes EPA undertook a series of fourteen incinerator burns. Analysis of ash from these burns provided the numerical basis for nonwastewater standards. Detection limit data were obtained from the ash itself for all constituents. However, recovery levels were determined for only a handful of constituents. After these recoveries were determined by spiking ash with the selected constituents and measuring the percentage of the spike which was recovered, these recovery values were transferred to chemically similar constituents and incorporated into the nonwastewater treatment standard calculations. EPA generally rejected recoveries ranging outside the 20% to 200% range following the guidance of the BDAT program's Quality Assurance Project Plan.

ORIGINAL EPA NONWASTEWATER INCINERATOR BURN DETECTION LIMITS

EPA test burn	Detection limits for volatile organics	Detection limits for semivolatile organics
Test #1	0.1–10.0	0.11–10.0
Test #2	0.2–50.0	0.08–5.0
Test #3	0.05–10.0	0.01–10.1
Test #4	2.0–10.0	2.0–50.0
Test #5	[a] 2.0–50.0	0.5–10.0
Test #6	[b] 0.2–50.0	0.4–7.0
Test #7	[c] 2.0–20	0.2–5
Test #8	0.025–2.0	1.0–10.0
Test #9	0.005–0.4	0.42–4.0
Test #10	[c] 1.5–30	1.00–5.0
Test #11	0.005–0.4	0.531–4.0
Test #13	0.01–2.0	0.36–1.8
Test #14	[a] 0.010–2	0.36–1.8

[a] Excluding one outlier out of 40 analytes.
[b] Excluding five outliers out of 40 analytes.
[c] Excluding two outliers out of 40 analytes.

(iii) Solicitation of Treatability Data. EPA solicits additional treatability and analytical data concerning nonwastewater forms of these constituents. By taking comment on whether to promulgate nonwastewater standards for these constituents, EPA is reopening the discussion of the issues of detection limits and recoveries raised by ETC in the comments following the Third Third proposal. EPA opens the question of whether advances in detectability, notably the use of HLPC (high pressure liquid phase chromatography) may allow reliable measurement. EPA also solicits comment whether more reliable recovery values have been achieved for these constituents, and at what detection level are reliable results achieved.

(iv) Additional Potential Nonwastewater UTS Based on Treatability Groups. EPA is also soliciting comment on potential treatment standards for 2-chlorovinyl ether, 1,2-diphenylhydrazine, ethylene oxide and methyl methanesulfonate based on the Treatability Group categories outlined in the LDR Phase II Final Background Document for Universal Standards, Volume A, Universal Standards for Nonwastewater Forms of Listed Hazardous Wastes. Specifically, for each of the constituents listed above, EPA is considering as potential UTS the lowest nonwastewater treatment standard for the treatability group to which that constituent belongs.

Treatability groups collect the UTS constituents into sets of chemically similar compounds with similar behavior in treatment processes and analytical instruments. UTS for nonwastewater UTS are based on the detection limits of that compound in incinerator ash. Since these detection limits reflect the constituent's ''fate and transport'' in the analytical unit

according to its chemical structure and composition, transferring treatability data among members of treatability groups accounts for similarities in analytical quantification as well as in treatment.

NONWASTEWATER UTS

Compound	NW UTS (mg/l)
Acrolein	2.8
4-Aminobiphenyl	13
Aramite	2.5
Chlorobenzilate	6.6
2-Chlorovinyl ether	5.6
Dibenz(a,e)pyrene	22
1,2-Diphenylhydrazine	1.5
Ethylene oxide	0.75
Methyl methanesulfonate	4.6
p-Dimethylaminoazobenzene	29
2-Naphthylamine	15

(v) UTS for Sulfide in Nonwastewater Form.

EPA is soliciting treatability data for nonwastewater forms of sulfide. In the absence of treatability data for this inorganic ion in nonwastewater matrices, EPA is not proposing treatment standards but is requesting treatability and analytical data on which to develop a standard.

(vi) UTS for Fluoride in Nonwastewater Form.

EPA is today proposing a 48 mg/l as the UTS for the fluoride ion identical to that proposed today for fluoride in K088 nonwastewaters. The basis of the K088 standard is discussed in the section of today's preamble proposing treatment standards for K088 wastes. Today's proposed fluoride nonwastewater UTS, like the K088 fluoride standard, is based on the use of SW-846 leachate method 1311. Fluoride, like zinc, is not an underlying hazardous constituent in characteristic wastes, according to the definition at § 268.2(i).

b. Wastewaters. Additionally, today's rule proposes a wastewater treatment standard for 1,4-dioxane. 1,4-Dioxane is the only UTS constituent for which EPA had promulgated a nonwastewater standard but not a wastewater standard. Commenters reported analytical difficulties in quantifying 1,4-dioxane at the wastewater standard proposed in the LDR Phase II UTS (0.12 mg/l); this standard was based on a transfer from ethyl ether. EPA consequently withdrew that standard in the LDR Phase II final rule. The docket for today's rule includes treatability data submitted by one such commenter.

Today's rule proposes a wastewater UTS of 0.22 mg/l for 1,4-dioxane. This standard is being proposed as the maximum daily limit for 1,4-dioxane in the proposed effluent guidelines for the pharmaceuticals industry, based on the performance of steam stripping followed by biological treatment.

EPA also solicits comment on a wastewater standard for 1,4-dioxane of 8.67 mg/l, followed by biological treatment. The basis of this alternative standard is treatability data for distillation, which was developed for the proposed pharmaceutical effluent guidelines. The data supporting this standard represents a transfer of distillation performance data with methanol to 1,4-dioxane.[13]

WASTEWATER UTS

Compound	WW UTS
1,4-Dioxane	0.22 mg/l

3. Application to Listed Waste

a. Wastewater-nonwastewater pairs. There are several cases where a constituent is regulated in wastewater forms of particular listed wastes with UTS but not in nonwastewater and a nonwastewater UTS exists for these constituents, having been promulgated in LDR Phase II. For these constituents, EPA proposes to extend the UTS to nonwastewaters, and vice versa. In other words, in cases where the 40 CFR 268.40—Table of Treatment Standards for Hazardous Wastes lists a numerical treatment standard for a constituent in one form of a listed waste but not in the other, today's rule proposes the UTS as the standard for the other form. This section of today's rule does not propose new UTS, rather it extends existing UTS to gaps in the media-specific standards for individual constituents in listed wastes. An example is K019 where p-dichlorobenzene, fluorene and 1,2,4,5-tetrachlorobenzene are regulated with UTS in wastewater forms of K019 but are not regulated—indicated in the Consolidated Table as ''NA''—in nonwastewater forms of K019. Today's rule proposes filling in these ''NA's'' for p-dichlorobenzene, fluorene and 1,2,4,5-tetrachlorobenzene in nonwastewater for K019 with the UTS and similarly applying UTS in other cases where UTS now apply to a constituent in either wastewaters and nonwastewaters but do not apply to both. The gaps between wastewater and nonwastewater coverage for individual constituents in listed wastes occurred because the Agency decided on a waste code-by-waste code basis whether to include constituents in wastewater, nonwastewater or both forms of a waste. EPA now believes that applying UTS to wastewaters and nonwastewaters consistently ensures treatment of regulated constituents regardless of the physical form of the waste or the waste treatment residual regulated under the ''derived-from'' rule.

The following tables show those regulated constituents, by waste code, where either a wastewater or a nonwastewater UTS is added by today's proposal.

Waste code	Constituent	Wastewater standard (mg/l)
F006	Silver	0.43
F007	Cadmium	0.69
	Silver	0.43
F008	Cadmium	0.69
	Silver	0.43
F009	Cadmium	0.69
	Silver	0.43
F011	Cadmium	0.69
	Silver	0.43
F012	Cadmium	0.69
	Silver	0.43
F038	Nickel	3.98

[13] At the time of signature of this rule, further data on these effluent guidelines were forthcoming. This additional data, if not available at the time of publication of this rule, will be made available shortly thereafter.

Waste code	Constituent	Wastewater standard (mg/l)
K018	Pentachloroethane	0.055
K030	Hexachlorpropylene	0.035
	Pentachlorobenzene	0.055
	Pentachloroethane	0.055
K035	Acenaphthene	0.059
	Anthracene	0.059
	Dibenz(a,h)anthracene	0.055
	Fluorene	0.068
	Indeno(1,2,3-cd)pyrene	0.0055
K048	Nickel	3.98
K049	Nickel	3.98
K050	Nickel	3.98
K051	Nickel	3.98
K052	Nickel	3.98
K061	Antimony	1.9
	Arsenic	1.4
	Barium	1.2
	Beryllium	0.82
	Mercury	0.15
	Selenium	0.82
	Silver	0.43
	Thallium	1.4
	Zinc	2.61
P013	Barium	1.2

Waste code	Constituent	Nonwastewater standard (mg/kg unless otherwise noted)
F001–5	Carbon disulfide	4.8 (mg/l TCLP)
	Cyclohexanone	0.75 (mg/l TCLP)
	Methanol	0.75 (mg/l TCLP)
F037	Acenaphthene	3.4
	Fluorene	3.4
	Lead	0.37 (mg/l TCLP)
F038	Fluorene	3.4
	Lead	0.37 (mg/l TCLP)
F039	Acetonitrile	38
	Acrolein	2.8
	4-Aminobiphenyl	13
	Aramite	2.5
	Carbon disulfide	4.8 (mg/l TCLP)
	Chlorobenzilate	6.6
	2-Chloro-1,3-butadiene	0.28
	Cyclohexanone	0.75 (mg/l TCLP)
	Dibenz(a,e)pyrene	22
	Diphenylamine/diphenylnitrosamine	13
	1,2-Diphenylhydrazine	1.5
	Ethylene oxide	0.75
	Methanol	0.75 (mg/l TCLP)
	Methyl methanesulfonate	4.6
	2-Naphthylamine	15
	N-Nitrosodimethylamine	2.3
	Phthalic anhydride	28
	tris-(2,3-Dibromopropyl)phosphate	0.10
	Beryllium	0.014 (mg/l TCLP)
	Fluoride	48
	Thallium	0.078 (mg/l TCLP)
	Vanadium	0.23 (mg/l TCLP)
K006	Lead	0.37 (mg/l TCLP)
K018	Chloromethane	30
K019	p-Dichlorobenzene	6.0
	Fluorene	3.4
	1,2,4,5-Tetrachlorobenzene	14
K028	Cadmium	0.19 (mg/l TCLP)
K030	o-Dichlorobenzene	6.0
	p-Dichlorobenzene	6.0
K048	Fluorene	3.4
	Lead	0.37 (mg/l TCLP)
K049	Carbon disulfide	4.8 (mg/l TCLP)
	2,4-Dimethylphenol	14

Waste code	Constituent	Nonwastewater standard (mg/kg unless otherwise noted)
	Lead	0.37 (mg/l TCLP)
K050	Lead	0.37 (mg/l TCLP)
K051	Acenaphthene	3.4
	Fluorene	3.4
	Lead	0.37 (mg/l TCLP)
K052	2,4-Dimethylphenol	14
	Lead	0.37 (mg/l TCLP)
K083	Cyclohexanone	0.75 (mg/l TCLP)
K086	Cyclohexanone	0.75 (mg/l TCLP)
	Methanol	0.75 (mg/l TCLP)
K101	Cadmium	0.19 (mg/l TCLP)
	Lead	0.37 (mg/l TCLP)
	Mercury	0.025 (mg/l TCLP)
K102	Cadmium	0.19 (mg/l TCLP)
	Lead	0.37 (mg/l TCLP)
	Mercury	0.025 (mg/l TCLP)
P003	Acrolein	2.8
P056	Fluoride	48
U038	Chlorobenzilate	6.6
U042	2-Chloroethyl vinyl ether	5.6
U093	p-Dimethylaminoazobenzene	29
U134	Fluoride	48
U168	2-Naphthylamine	15

b. Elimination of Redundant Methods of Treatment. Several constituents had been regulated with UTS in one medium (wastewaters or nonwastewaters) but were regulated with a method of treatment in the other as alternatives, namely P022 carbon disulfide (nonwastewaters), U003 acetonitrile (nonwastewaters), U057 cyclohexanone (nonwastewaters), U108 1,4-dioxane (wastewaters and nonwastewaters), U110 1,2-diphenylhydrazine (wastewaters), U115 ethylene oxide (wastewaters), U154 methanol (wastewaters and nonwastewaters). The LDR Phase II proposal did not suggest that the specified methods be replaced with the UTS. However, in comments received on the proposal, commenters requested that EPA apply the UTS to these wastes. Because EPA had not specifically proposed such a change, the LDR Phase II final rule allowed both the specified method or the UTS.

EPA believes that the UTS are appropriate so that the alternative specified method is now unnecessary. Numerical treatment standards, such as UTS, ensure treatment more reliably than do standards expressed as methods of treatment because the target concentrations allow for verification that the waste has been treated. Consequently, EPA intends to replace required methods of treatment with numerical standards whenever possible. EPA believes UTS for these constituents provides such an opportunity. Therefore today's rule proposes to eliminate the alternative methods of treatment and establishes UTS for both wastewater and nonwastewater constituents.

4. Revision to the Acetonitrile Standard

a. The acetonitrile nonwastewater standard. EPA reviewed the constituent-specific standard for acetonitrile nonwastewaters, and believes that this standard should be raised from 1.8 mg/kg to 38 mg/kg. The 1.8 mg/kg standard, which was based on incineration, is not consistent with treatment data and standards for other structurally related organo-nitrogen UTS compounds. For example, the nonwastewater treatment standard for both acrylonitrile and methacrylonitrile is 84 mg/kg. The nonwastewater standards for ethyl methacrylate and methyl methacrylate are 160 mg/kg.

Acetonitrile is one of the compounds singled out by the ETC as being problematic to analyze for in combustion residues (i.e., nonwastewaters). In response to the Third Third Rulemaking, the ETC had submitted data from which they calculated a method detection limit of 6.678 mg/kg for other combustion residues.

The Agency is soliciting data and comment specifically on the analytical achievability of the 1.8 mg/kg acetonitrile nonwastewater standard in combustion residues and the ability of non-combustion technologies to achieve the 1.8 mg/kg and the proposed standard of 38 mg/kg for acetonitrile in nonwastewaters.

b. Revoking the special wastewater/nonwastewater definition for acrylonitrile wastes. The Agency also recognizes that K011/13/14 nonwastewaters could consist of over 90% water, and that wastewater treatment is an appropriate means of treating these wastes. For the above reasons, the Agency is proposing to revise the treatment standard for acetonitrile in nonwastewaters to 38 mg/kg based on the existing treatment data, which comes from treating K011/13/14 wastes containing greater than 1% TOC by steam stripping. (See the background documents for K011/13/14 nonwastewaters in the Second Third Final Rule Docket and the background documents for K011/13/14 ''wastewaters'' in the Third Third Final Rule Docket).

5. Aggressive Biological Treatment as BDAT for Petroleum Refinery Wastes

EPA solicits comment whether to specify aggressive biological treatment as the treatment standard for decharacterized petroleum refining wastewaters. Aggressive biological treatment is defined in § 261.31(b)(2) as one of the following four processes: activated sludge, trickling filters, rotating biological contactors or high-rate mechanical aeration. The American Petroleum Institute (API) has submitted data to the Agency on ten of its facilities using aggressive biological treatment. Along with the data API requested that EPA specify aggressive biological treatment as the treatment standard for their wastes. Such a standard, which would operate in lieu of UTS, may reduce the monitoring burden. EPA

solicits comment on proposing aggressive biological treatment as BDAT for these wastes. However, because monitoring is required under CWA permits, EPA is also soliciting comment on whether a reduction in the number of constituents monitored is significant. The data which API submitted demonstrate that aggressive biological treatment in the industry may consistently meet UTS. There was one observation, however, for which a constituent exceeded UTS, and other observations which involved detection limits which exceeded UTS. This data is available in the docket for today's rule.

B. Dilution Prohibition

Under the existing LDR dilution prohibition (40 CFR 268.3), burning inorganic metal-bearing hazardous wastes can be a form of impermissible dilution. On May 27, 1994, the Assistant Administrator for the Office of Solid Waste and Emergency Response issued a Statement of Policy which clarified this point (59 FR 27546–7). Today the Agency is proposing to codify and quantify these principles.

1. Dilution Prohibited as a Method of Treatment

Under RCRA, the LDR prohibition on dilution states generally that no person ''shall in any way dilute a restricted waste * * * as a substitute for adequate treatment to achieve compliance with (a treatment standard for that waste)''. 40 CFR 268.3(a). This prohibition implements the requirement of section 3004(m) of RCRA, which requires that hazardous constituents in hazardous wastes be destroyed, removed or immobilized before these wastes can be land disposed. Hazardous constituents are not destroyed, removed or immobilized if they are diluted. *CWM* v. *EPA*, 976 F.2d at 16, 17, 19–20; see also S. Rep. No. 298, 98th Cong. 1st Sess. 17 (1983) (''the dilution of wastes by the addition of other hazardous waste or any other materials during waste handling, transportation, treatment or storage is not an acceptable method of treatment to reduce the concentration of hazardous constituents'').

Consistent with these authorities, the Agency has stated that the dilution prohibition serves one chief purpose—''to ensure that prohibited wastes [14] are treated by methods that are appropriate for that type of waste.'' (55 FR 22532, June 1, 1990). Impermissible dilution can occur under a number of circumstances. The most obvious is when solid wastes are added to a prohibited waste to reduce concentrations but not volumes of hazardous constituents, or to mask their presence. Impermissible dilution also may occur when wastes not amenable to treatment by a certain method (i.e., treated very ineffectively by that treatment method) are nevertheless 'treated' by that method (55 FR 22666, June 1, 1990) (biological treatment does not effectively remove toxic metals from wastes; therefore, prohibited wastes with treatment standards for metals ordinarily would be impermissibly diluted if managed in biological treatment systems providing no separate treatment for the metals). See also 52 FR at 25778–79 (July 8, 1987) (impoundments which primarily evaporate hazardous constituents do not qualify as section 3005(j)(11) impoundments which may receive otherwise-prohibited hazardous wastes that have not met the treatment standard).

This proposed rule gives a general distinction between ''adequate treatment'' and potential violations of the dilution prohibition. The Agency has evaluated the listed wastes and has determined that 43 of the RCRA listed wastes (as set forth in 40 CFR 261) typically appear to be such inorganic hazardous wastes; i.e., they typically do not contain organics, or contain only insignificant amounts of organics, and are not regulated for organics [15]. BDAT for these inorganic, metal-bearing listed wastes is metal recovery or stabilization. Thus, impermissible dilution may result when these wastes are combusted.

This proposed rule reflects the Agency's concerns about the hazard presented by toxic metals in the environment. When an inorganic metal-bearing hazardous waste with insignificant organics is placed in a combustion unit, legitimate treatment for purposes of LDR ordinarily is not occurring. No treatment of the inorganic component occurs during combustion, and therefore, metals are not destroyed, removed, or immobilized. Since there are no significant concentrations of organic compounds in inorganic metal-bearing hazardous wastes, it cannot be maintained that the waste is being properly or effectively treated via combustion (i.e., thermally treated or destroyed, removed, or immobilized).

In terms of the dilution prohibition, if combustion is allowed as a method to achieve a treatment standard for these wastes, metals in these wastes will be dispersed to the ambient air and will be diluted by being mixed in with combustion ash from other waste streams. Adequate treatment (stabilization or metal recovery to meet LDR treatment standards) has not been performed and dilution has occurred. It is also inappropriate to regard eventual stabilizing of such combustion ash as providing adequate treatment for purposes of the LDRs. Simply meeting the numerical BDAT standards for the ash fails to account for metals in the original waste stream that were emitted to the air and for reductions achieved by dilution with other materials in the ash. (In most cases, of course, the metal-bearing wastes will have been mixed with other wastes before combustion, which mixing itself could be viewed as impermissible dilution).

These inorganic, metal-bearing hazardous wastes should be and are usually treated by metal recovery or stabilization technologies. These technologies remove hazardous constituents through recovery in products, or immobilize them, and are therefore permissible BDAT treatment methods.

There are eight characteristic metal wastes; however, only wastes that exhibit the TC as measured by both the TCLP and the EP for D004–D011 are presently prohibited (see 55 FR 22660–02, June 1, 1990). Characteristic wastes, of course, cannot be generically characterized as easily as listed wastes because they can be generated from many different types of processes. For example, although some characteristic metal wastes do not contain organics or cyanide or contain only insignificant amounts, others may have organics or cyanide present which justify combustion, such as a used oil exhibiting the TC characteristic for a metal. Thus, it is difficult to say which D004–D011 wastes would be impermissibly diluted when combusted, beyond stating that as a general matter, impermissible dilution would occur if the D004–D011 waste does not have significant organic or cyanide content but is nevertheless combusted.

2. Permissible Dilution

EPA ordinarily would not consider the following hazardous wastes to contain ''significant organic or cyanide content'', for which combustion would otherwise be impermissible dilution (the Agency is adding criteria beyond that included in the May 27, 1994 policy memorandum to clarify situations raised in comments received). Combustion of the following inorganic metal-bearing wastes is therefore not

[14] A ''prohibited'' hazardous waste is one which is actually subject to a prohibition on land disposal without first being treated, or disposed in a no-migration unit. See 54 FR 36968 (Sept. 6, 1989).

[15] To the extent that these wastes or residues of these wastes (i.e., biological treatment sludges) contain significant organic content, combustion may be an appropriate treatment technology. See later discussion regarding this point.

prohibited under the LDR dilution prohibition: (1) Wastes that, at the point of generation, or after any bona fide treatment such as cyanide destruction prior to combustion, contain hazardous organic constituents or cyanide at levels exceeding the constituent-specific treatment standard for UTS; (2) organic, debris-like materials (e.g., wood, paper, plastic, or cloth) contaminated with an inorganic metal-bearing hazardous waste; (3) wastes that, at point of generation, have reasonable heating value such as greater than or equal to 5000 Btu/lb (see 48 FR 11157, March 16, 1983); (4) wastes co-generated with wastes that specify combustion as a required method of treatment; (5) wastes, including soil, subject to Federal and/or State requirements necessitating reduction of organics (including biological agents); and (6) wastes with greater than 1% Total Organic Carbon (TOC). An ''inorganic metal-bearing waste'' is one for which EPA has established treatment standards for metal hazardous constituents, and which does not otherwise contain significant organic or cyanide content. (See 40 CFR Appendix XI proposed in today's rule for a list of waste codes which EPA tentatively believes satisfies this definition.) The foregoing six categories of waste typically would contain sufficient organic content to indicate that combustion can be a reasonable means of treating the wastes prior to land disposal. EPA solicits comments on whether there are other inorganic wastes that would technically justify combustion as a means of complying with BDAT. For example, are there metal bearing organic wastes or complexing agents not covered by the above criteria that prevent effective stabilization of metals due to the presence of unregulated organics? However, as noted above, mixing practices such as fuel blending to add organics to inorganic metal-bearing hazardous wastes ordinarily would be considered to be impermissible dilution. This is because, under current rules, the dilution prohibition applies at the point a hazardous waste is generated. *CWM* v. *EPA* 976 F.2d at 22–3; see also 48 FR 11158, 11159 and nn. 2 and 4 (March 16, 1983); 53 FR at 522 (Jan. 8, 1988) determinations of legitimacy of recycling are made on a waste-by-waste basis before any blending occurs.

The Agency is aware of a practice within the foundry industry that recycles foundry sand by thermally oxidizing impurities. It is EPA's view that this process would violate the policy against combustion of inorganics, unless the foundry sand being oxidized contains toxic organic constituents or has a significant organic component (as described above).

3. Cyanide-Bearing Wastes and Combustion

A commenter questioned why EPA allows the presence of cyanide to justify combustion when there are adequate alternative treatment methods. This approach was adopted because cyanide is destroyed by combustion. Existing LDR rules, in many cases, identify combustion as an appropriate BDAT for destruction of cyanide-bearing wastes. The May 27, 1994 policy statement did not change BDAT determinations and thus reflected that combustion could be appropriate for destroying certain cyanide-bearing wastes. EPA, however, solicits comments on whether the cyanide criterion should be dropped.

While cyanide is effectively treated in combustion devices, EPA has received comments that non-combustion technologies such as alkaline chlorination are available to effectively treat metal bearing wastes that contain cyanide and that BDAT for these wastes should not include combustion. EPA solicits comments on the relative effectiveness and risks of combustion versus alkaline chlorination in treating cyanides in inorganic metal bearing wastes.

4. Table of Inorganic Metal Bearing Wastes

The table being proposed in 40 CFR part 268, Appendix XI today indicates the list of waste codes for which EPA regulates only metals and/or cyanides that would be affected by this proposed rule. Except for P122, this list is identical to the list originally published in the aforementioned Policy Statement on this subject. The Agency is removing P122 (Zinc Phosphide greater than 10%) from the list of restricted inorganic metal-bearing wastes, because the Agency has previously promulgated a treatment standard of INCIN for the nonwastewater forms of this waste. See 40 CFR 268.40. The policy memo was in error on this point. The Agency solicits comment on this issue, particularly with respect to costs associated with the segregation of these wastes.

5. The Addition of Iron Dust To Stabilize Characteristic Hazardous Wastes: Potential Classification as Impermissible Dilution

The Agency has become aware that certain industries may be adding iron dust or iron filings to some characteristic hazardous wastes as a form of treatment. For example, foundries are known to mix iron dust or filing with the D008 waste sand generated from their spent casting molds, viewing this practice as a form of stabilization. The Agency believes, however, that such stabilization is inadequate to minimize the threats posed by land disposal of metal-containing hazardous wastes, and is today proposing to clarify that this waste management practice is ''impermissible dilution'' under 40 CFR 268.3, for reasons discussed below.

In particular, when iron dust or filings are added to a characteristic waste foundry sand, it is considered ''treatment'' under the definition in 40 CFR 260.10. Nevertheless, the Agency does not believe it to be adequate treatment; rather, it is merely the addition of material as a substitute for adequate treatment, and thus constitutes impermissible dilution. See § 268.3(b), 54 FR at 48494 (Nov. 1989), and 55 FR at 22532 (June 1, 1990). The Agency believes it is unlikely that any chemical reactions are taking place when iron dust or iron filings are added, because the waste foundry sand would likely contain only lead, silica, microscopic pieces of castings, and binders (clays, phenols, and tars) from the molds. The Agency does not believe that simply adding iron would provide treatment for either the lead or the organics (i.e., phenol and tar).

While it is arguable that iron could form temporary, weak, ionic complexes with silica and/or phenate, so that when analyzed by the TCLP test the lead appears to have been stabilized, the Agency believes that this ''stabilization'' is temporary, based upon the nature of the complexing. In fact, a report prepared by EPA on Iron Chemistry in Lead Contaminated Materials (Feb. 22, 1994), which specifically addressed this issue, found that iron lead bonds are weak, adsorptive surface bonds, and therefore not likely to be permanent. Furthermore, as this iron-rich mixture is exposed to moisture and oxidative conditions over time, interstitial water would likely acidify, which could potentially reverse any temporary stabilization, as well as increase the leachability of the lead from the foundry sand. Therefore, the addition of iron dust or filings to characteristic waste foundry sand does not appear to provide long-term treatment.

Another related concern is that the addition of iron has been demonstrated to result in false negatives for lead when wastes are analyzed by means of the

TCLP.[16]. This significant interference with the analytical method for detecting lead, in conjunction with the concerns about the temporary nature of any stabilization that would occur, fully supports identifying this practice as impermissible dilution or otherwise failing to satisfy the requirements of RCRA section 3004(m) to minimize short- and long-term threats to human health and the environment. Comments and data are solicited on whether this type of stabilization is effective in achieving long-term treatment. Comments and data are also solicited on whether a test method other than the TCLP is more appropriate for measuring compliance for this waste.

D. Expansion of Methods Requiring Incineration

EPA is proposing to modify the treatment standard expressed as INCIN, which specifies hazardous waste incineration, to, CMBST, which allows combustion in incinerators and boilers and industrial furnaces. The INCIN requirement was set before EPA had issued air emission requirements for boilers and industrial furnaces (BIFs). Now that BIF regulations are in place, the need to constrain treatment to one type of combustion device is no longer appropriate. With the development of innovative technologies, EPA also solicits comment on whether the Catalytic Extraction Process, for which Molten Metal Technology received a determination of equivalent treatment under § 268.42(b)[17], should also be allowed for all wastes which have a treatment standard of CMBST, and whether there are other technologies which are equivalent to CMBST.

E. Clean Up of 40 CFR Part 268

EPA is proposing further changes to the LDR program to achieve the goal of simplified regulations. The Agency is committed to improving the LDR program by implementing participant suggestions from the LDR Roundtable held on January 12–14, 1993.

The LDR requirements are found, primarily, in 40 CFR Part 268. EPA intends to remove language that is out-of-date, and to clarify language which may be confusing, in an effort to make the LDR program easier to understand, implement, and enforce. This effort will continue in the LDR Phase IV rule, scheduled for proposal in June 1995.

1. Section 268.8

Section 268.8 stated that First and Second Third wastes for which EPA did not promulgate treatment standards by their respective effective dates could continue to be disposed of in landfill and surface impoundment units until May 8, 1990 (see 55 FR 22526). Because treatment standards for all scheduled wastes were promulgated in the Third Third rule in 1990, these ''soft hammer'' requirements are no longer necessary. Therefore, § 268.8 is proposed to be removed from part 268.

2. Sections 268.10–268.12

The purpose of Subpart B of § 268 was to set out a schedule for hazardous wastes by the date when treatment standards were to be established. Sections 268.10, 268.11, and 268.12 of Subpart B included the First Third, Second Third, and Third Third scheduled wastes respectively. Deadlines in all three of these sections were met on time, and the wastes are subject to treatment standards. Therefore, these three sections are no longer necessary, and are proposed to be removed.

3. Section 268.2(f)

The existing wastewater definition found in § 268.2(f) includes wastes that have less than 1% TOC and less than 1% TSS. There are three exceptions given to this definition: (1) F001–F005 wastewaters have no criteria for TSS, and must contain less than 1% solvent constituents, (2) K011, K013, K014 wastewaters must contain less than 5% TOC and less than 1% TSS, and (3) K103 and K104 wastewaters must contain less than 4% TOC and less than 1% TSS. With the promulgation of UTS in the LDR Phase II final rule (59 FR 47982, September 19, 1994), such distinctions are inconsistent and an unnecessary complication of the regulations. While such initial classifications may have had some meaning, after effective BDAT treatment the residuals are appropriately regulated by the wastewater or nonwastewater limit as specified by the 1% TOC and TSS criteria. The Agency is therefore proposing to remove paragraphs (1)–(3) from § 268.2(f).

VIII. Proposed Prohibition of Hazardous Waste as Fill Material

EPA is also proposing today to amend the LDR rules so as to prohibit the placement of hazardous waste as a fill material unless the prohibited waste is treated so that short- and long-term threats have been minimized. By ''fill material'', the Agency means uses[18] of waste as a substitute for low grade material (such as sand or dirt) to raise the level of land, occupy space, or otherwise fill in depressions. Hazardous waste includes, of course, any waste that is identified or listed as hazardous under § 261.3, and so includes wastes (such as residues from treating listed wastes) that are hazardous by virtue of the mixture and derived-from rules. The result of this rule, if finalized, would thus be to confirm that such uses are prohibited and therefore illegal unless the fill area is a regulated unit (i.e., a subtitle C landfill).

EPA in fact already interprets current rules as ordinarily providing a similar result. In the preamble to the May 19, 1980 rules establishing the subtitle C hazardous waste management program, EPA stated that an exemption from regulation for legitimate recycling activities does not apply to ''sham uses and recovery or reclamation—e.g. 'landfilling' or 'land reclamation' ''. 45 FR at 33093. In the April 4, 1983 Federal Register Notice proposing a separate regulatory regime for hazardous wastes legitimately recycled in a manner constituting disposal (ultimately promulgated as 40 CFR 260.20–.23), the Agency stated that this provision would not apply to hazardous wastes used as fill material, the specific example provided being ''waste stabilization processes where the stabilized material is then used as fill.'' 48 FR at 14985. The Agency further stated that it was ''convinced that these waste treatment operations are not production processes and can therefore be regulated as waste management.'' *Id*.

The reasons for the Agency's interpretation are evident. The wastes are being put into the environment without any safeguards to prevent exposure. Hazardous constituents can migrate into the environment and reach human and environmental receptors by any number of direct pathways, including inhalation, dermal contact, surface runoff, and leaching to groundwater. Indirect exposure pathways exist as well.

The amended rule, if adopted, would prohibit the use of hazardous waste as fill material, and add a conforming amendment to § 266.20(b) stating that

[16] See memo from John V. Cignatta, Datanet to John Gauthier, EPA Region 1, dated September 8, 1992.

[17] The Catalytic Extraction Process, used by Molten Metal Technology, involves a molten metal bath, with temperatures around 3000°F, into which liquid wastes are injected, and solid wastes are fed with a carrier gas (Ar). The process treats the wastes in a high temperature reduction environment, which reduces the compounds to their elemental state. The metallic, inorganic ceramic, and gaseous phases which result are then reused, or purified and released.

[18] Incidentally, the term ''use'' here has no specific meaning other than the normal dictionary definition. It is not meant to connote the phrase ''used or reused'' found in § 261.1(c)(5), which is a term of art for determining the scope of the exclusion in § 261.2(e)(1) (i) and (ii).

disposal of hazardous waste as fill material is not a type of use constituting disposal subject to the special standards of Part 266 subpart C, but rather disposal plain and simple, and hence illegal unless occurring in a regulated unit; or, as explained below, if the prohibited waste can be shown to be treated to satisfy section 3004(m). Section 3004(m) of the statute states that EPA is to establish ''levels or methods of treatment, *if any*, which substantially reduce the likelihood of migration of hazardous constituents from the wastes *so that short-term and long-term threats to human health and the environment are minimized*.'' (Emphasis added). In this case, the Agency is unable to determine any level of treatment of hazardous wastes which can guarantee the requisite minimization of short-term and long-term threats when prohibited hazardous wastes are used as fill material.

Because there are no specifications or constraints on placement of fill material, reliable assessments pose particular uncertainties and difficulties. These uncertainties relate to release, transport, and ultimate exposure, and include uncertainties regarding release mechanisms, types and amounts of hazardous constituents released due to potential waste variability, location of human and environmental receptors, and transport mechanisms. cf. *HWTC III*, 886 F. 2d at 1362–63. The existing LDR treatment standards do not fully address these potential problems for at least two reasons. First, the LDR standards are technology-based, not risk-based standards. Second, for metal hazardous constituents, the LDR standards do not regulate the total metal content of hazardous wastes. Total metal content is relevant to many possible exposure pathways when hazardous waste is used as fill material, including inhalation and direct ingestion pathways. See also 59 FR at 43499 (August 24, 1994), where EPA made similar findings with respect to use of hazardous waste K061 as anti-skid or deicing material (uses which are better defined, and hence more assessable, than use as fill material). Similarly, this type of disposal does not appear to satisfy the ultimate protectiveness standard in sections 3004 (d), (e), and (g) (which requires that disposal of hazardous waste that meets a treatment standard must nevertheless still be protective, taking into account enumerated uncertainties—including long-term uncertainties associated with the persistence, toxicity, mobility, and propensity to bioaccumulate—of land disposed hazardous waste and hazardous constituents). See 56 FR at 41168 (August 19, 1991), adopting this standard, which was first articulated in *NRDC* v. *EPA*, 907 F. 2d 1146, 1171–2 (D.C. Cir. 1990) (dissenting opinion).

EPA is not, in this notice, proposing to prohibit other uses of hazardous waste that involve placement on the land. Thus, hazardous waste presently placed on the land as fill material can be diverted to a less risky, more acceptable activity. See 59 FR 8583 (Feb. 23, 1994) noting availability of safer alternatives as justification for the then-proposed prohibition on non-encapsulated uses of hazardous waste K061. Nor would the agency preclude the possibility that particular types of prohibited waste could be used as fill material, provided that it can be established that threats to human health and the environment have been minimized, taking into account all of the statutorily-enumerated uncertainties cited above.

In a recent proposed rule on the product use of High Temperature Metal Recovery slags derived from K061, F006, and K062 hazardous waste, the Agency initially evaluated the risks that result from a variety of uses of these slags, including use as road subbase, an ingredient in cement and asphalt, top grade material for roads, etc. (59 FR 67256, December 29, 1994). While this evaluation considered the possible release and transport of waste constituents, the uses examined did not include the unrestricted use of the waste-derived product as fill material. Use as fill could result in placement of the waste residual in almost any location, including a residential setting. Therefore, an evaluation of the risks posed by use of waste-derived products as fill would need to consider the potential for direct exposure to receptors located on-site (e.g., direct ingestion or inhalation of the material), in addition to the potential for movement of the material off-site to other receptors. Such an evaluation would need to consider at a minimum the volume of material used as fill, the levels of toxic constituents in the material (both total and leachable), the placement site and proximity to receptors, and activity at the site that would promote release, transport, and exposure. Indirect exposure pathways also could be relevant, particularly for hazardous wastes containing bioaccumulative hazardous constituents (including dioxins and dibenzofurans).

IX. Capacity Determinations

A. Introduction

This section summarizes the results of the capacity analysis for the wastes covered by this proposal. For background information on data sources, methodology, and a summary of each analysis, see the Background Document for Capacity Analysis for Land Disposal Restrictions, Phase III—Decharacterized Wastewaters, Carbamate and Organobromine Wastes, and Spent Potliners, found in the docket for today's rule.

In general, EPA's capacity analysis methodologies focus on the amount of waste to be restricted from land disposal that is currently managed in land-based units and that will require alternative treatment as a result of the LDRs. The quantity of wastes that are not managed in land-based units (e.g., wastewaters managed only in RCRA exempt tanks, with direct discharge to a POTW) is not included in the quantities requiring alternative treatment as a result of the LDRs. Also, wastes that do not require alternative treatment (e.g., those that are currently treated using an appropriate treatment technology) are not included in these quantity estimates.

EPA's decisions on whether to grant a national capacity variance are based on the availability of alternative treatment or recovery technologies. Consequently, the methodology focuses on deriving estimates of the quantities of waste that will require either commercial treatment or the construction of new on-site treatment systems as a result of the LDRs—quantities of waste that will be treated adequately either on site in existing systems or off site by facilities owned by the same company as the generator (i.e., captive facilities) are omitted from the required capacity estimates.[19]

B. Capacity Analysis Results Summary

For the decharacterized ICR and TC wastes managed in CWA, CWA-equivalent, and Class I injection well systems, EPA estimates that between 3.5 and 15 billion tons will be affected as a result of today's proposal. EPA believes that some affected facilities need time to build treatment capacity for these wastes, as wastewater volumes

[19] Traditionally, capacity analyses have focused on the demand for alternative capacity once existing on-site capacity and captive off-site capacity have been accounted for. However, for some of the wastes at issue in this rule it may not be feasible to ship wastes off site to a commercial facility. In particular, facilities with large volumes of wastewaters may not readily be able to transport their waste to treatment facilities. Alternative treatment for these wastes may need to be constructed on site.

generally make off-site treatment impractical. EPA has determined that sufficient alternative treatment capacity is not available, and today is proposing to grant a two-year national capacity variance for decharacterized wastewaters.

EPA estimates that approximately 90,000 tons of newly listed wastes included in today's proposal will require alternative treatment. In particular, approximately 4,500 tons of carbamate wastes (K156–K161, P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U277–U280, U364–U367, U372, U373, U375–U379, U381–U387, U389–U396, U400–U404, U407, U409–U411) will require alternative treatment. Less than 100 tons of organobromine wastes (K140, U408) are expected to require alternative treatment capacity. In addition, 85,000 tons of spent aluminum potliners (K088) will require alternative treatment capacity. Sufficient commercial capacity exists to manage all of these wastes, so EPA is not proposing to grant a national capacity variance for these wastes.

The quantities of radioactive wastes mixed with wastes included in today's proposal are generated primarily by the U.S. Department of Energy. EPA estimates that 820 tons of high-level waste and 360 tons of mixed low-level waste that may be affected by this proposal will be generated annually by DOE. In addition, there are currently 7,000 tons of high-level waste, 10 tons of mixed transuranic waste, and 2,700 tons of mixed low-level waste in storage that may be affected by this proposal. DOE currently faces treatment capacity shortfalls for high-level wastes and mixed transuranic wastes. Although DOE does have some available treatment capacity for mixed low-level wastes, most of this capacity is limited to treatment of wastewaters with less than one percent total suspended solids and is not readily adaptable for other waste forms. DOE has indicated that it will generally give treatment priority to mixed wastes that are already restricted under previous LDR rules. Therefore, EPA is proposing to grant a two-year national capacity variance to radioactive wastes mixed with the hazardous wastes affected by today's proposal.

Table 1 lists each RCRA hazardous waste code for which EPA is today proposing LDR standards. For each code, this table indicates whether EPA is proposing to grant a national capacity variance for land-disposed wastes.[20] Also, EPA is proposing to grant a three month national capacity variance for all wastes in this proposed rule to handle logistical problems associated with complying with the new standards. EPA is soliciting comment on these variance determinations.

TABLE 1.—VARIANCES FOR NEWLY LISTED AND IDENTIFIED WASTES

["Yes" Indicates EPA is Proposing to Grant a Variance]

Waste description	Surface-disposed wastes	Deep well-injected wastes
Ignitable Wastes [1](D001)	YES	YES.
Corrosive Wastes [1] (D002)	YES	YES.
Reactive Wastes [1] (D003)	YES	YES.
Newly Identified Pesticide Wastes [2] (D012-D017)	YES	YES.
Newly Identified TC Organic Wastewaters (D018-D043)	YES	YES.
Spent Aluminum Potliners (K088)	NO	NO.
Carbamate Production Wastes (K156-K161, P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U277-U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U400-U404, U407, U409-U411).	NO	NO.
Organobromine Wastes (K140, U408)	NO	NO.
Mixed Radioactive Wastes [3]	YES	YES.

[1] The variance determinations listed here apply only to decharacterized wastewaters managed in CWA, CWA-equivalent, and SDWA systems.

[2] The variance determinations listed here apply only to newly identified decharacterized D012-D017 wastewaters managed in CWA, CWA-equivalent, and SDWA systems.

[3] The variance determinations given listed apply only to radioactive wastes mixed with decharacterized D001-D003 or newly identified D012-D017 wastes managed in CWA, CWA-equivalent, and SDWA systems; to radioactive wastes mixed with newly identified TC organic wastewaters; and to radioactive wastes mixed with spent aluminum potliners, carbamate production wastes, or organobromine production wastes.

EPA is also proposing in this notice to prohibit placement of hazardous waste as fill material. To the extent this can be viewed as a new prohibition (which, given EPA's consistent interpretation that this activity should be occurring in regulated units, is unclear), EPA would not propose any type of capacity variance. Hazardous waste treatment residues satisfying LDR standards can be land disposed in subtitle C units, and there is no shortage of such disposal capacity. In addition, there may be opportunities for recycling hazardous waste treatment residues presently placed as fill (such as use in asphalt, cement, or as light weight aggregate) which would provide adequate capacity.

C. Requests for Comment

EPA is soliciting general comment and data on sources, quantities, and management practices of characteristic wastes, as well as presence and quantities of underlying hazardous constituents, from facilities managing their wastes using Subtitle D surface impoundments (CWA), or subsequent land disposal of treated wastewaters (CWA-equivalent), or Class I nonhazardous injection wells, or tanks. EPA requests specific information from facilities managing *de minimis* ICRT wastes, including information on waste sources, quantities, and management practices, as well as underlying hazardous constituents.

EPA requests specific information on volumes of carbamate and organobromine wastes that are recycled, mixed with, or co-managed with other wastes, and the volumes and types of residuals that are generated by the various management practices applicable to these wastes. EPA is also soliciting information, including quantities, management practices, and waste characteristics, for soil and debris contaminated with carbamate and/or organobromine wastes. EPA also seeks comments from the aluminum industry on volumes of K088 generated and future management of this waste.

EPA is soliciting specific data on reactive wastes which are deactivated

[20] The term ''land-disposed wastes'' denotes wastes that are managed in land-based units at any time during the waste's storage, treatment, or disposal.

using processes that may cause explosions, including quantities, management practices, and waste characteristics, and is requesting data for mixed TC/radioactive wastes which are deepwell injected.

X. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering 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 that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged 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.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is being proposed pursuant to sections 3004 (d) through (k), and (m), of RCRA (42 U.S.C. 6924(d) through (k), and (m)). It is proposed to be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble. Table 2 in 40 CFR 271.1(j) is also modified to indicate that this rule is a self-implementing provision of HSWA.

EPA's proposal to prohibit hazardous waste as fill material is also a HSWA regulation. It implements RCRA sections 3004 (d), (e), (g)(5), and (m), which provisions require EPA to prohibit all land disposal of hazardous waste that is not capable of being done in a manner that is protective and that minimizes short-term and long-term threats to human health and the environment from hazardous waste disposal. See also 59 FR 43499 (August 24, 1994), which is a HSWA rule prohibiting K061 as anti-skid/de-icing material and implements these same LDR provisions. Consequently, this provision, if enacted, would be effective immediately in authorized states.

B. Effect on State Authorization

As noted above, EPA is today proposing a rule that, when final, will be implemented in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for final authorization are described in 40 CFR 271.21.

Section 271.21(e)(2) requires that States with final authorization must modify their programs to reflect Federal program changes and to subsequently submit the modification to EPA for approval. The deadline by which the State would have to modify its program to adopt these regulations is specified in section 271.21(e). This deadline can be extended in certain cases (see section 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modifications are approved. Of course, states with existing standards could continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a state must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

The regulations being proposed today need not affect the State's UIC primacy status. A State currently authorized to administer the UIC program under the SDWA could continue to do so without seeking authority to administer the amendments that will be promulgated at a future date. However, a State which wished to implement Part 148 and receive authorization to grant exemptions from the LDRs would have to demonstrate that it had the requisite authority to administer sections 3004(f) and (g) of RCRA. The conditions under which such an authorization may take place are discussed in a July 15, 1985 final rule (50 FR 28728).

XI. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order No. 12866 requires agencies to determine whether a regulatory action is ''significant'' The Order defines a ''significant'' regulatory action as one that ''is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

The Agency estimated the costs of today's proposed rule to determine if it is a significant regulation as defined by

the Executive Order. The analysis considers compliance cost and economic impacts for both characteristic wastes and newly listed wastes affected by this rule. For characteristic wastes, the potential cost impacts of this rule depend on whether facilities' current wastewater treatment systems will meet the UTS levels or if additional treatment will be required. If current treatments are adequate, facilities will only incur administrative costs to have their permits revised. A rough estimate would be that there would be one-time incremental costs of $0.9 to $2.9 million for all incrementally impacted facilities. However, at the high end, if current wastewater treatment systems need to be augmented with additional treatment steps, the incremental compliance costs for today's rule could be as high as $1 million per affected facility. If 20% of the firms comply by installing additional treatment, treatment costs are estimated to be $6.5–$18.1 million/year. The Agency does not have adequate data to estimate how many, if any, facilities may require modification to their treatment facilities. The Agency requests comment and data on how often additional treatment may be required and what type of treatment may be needed.

For newly listed wastes, the costs are substantially higher and will be incurred each year. These costs range from approximately $11.9 million to $47.3 million and are attributable primarily to thermal treatment of spent aluminum potliner wastes (K088). Therefore, today's proposed rule may be considered an economically significant rule. Because today's proposed rule is significant, the Agency analyzed the costs, economic impacts, and benefits.

This section of the preamble for today's proposed rule provides a discussion of the methodology used for estimating the costs, economic impacts and the benefits attributable to today's proposed rule, followed by a presentation of the cost, economic impact and benefit results. More detailed discussions of the methodology and results may be found in the background document, ''Regulatory Impact Analysis of the Proposed Rule for the LDR Phase III Newly Listed and Identified Wastes,'' which has been placed in the docket for today's proposed rule.

1. Methodology Section

In today's proposed rule, the Agency is establishing treatment standards for the following wastes: end-of-pipe standards for ICR wastewaters managed in CWA and CWA-equivalent systems, and Class I nonhazardous UIC wells, TC pesticide (D012-17) and organic (D018-43) wastewaters managed in CWA and CWA-equivalent systems, and Class I nonhazardous UIC wells (all UIC managed volumes are covered under a different section of the preamble for today's rule), and newly listed wastes from three industries - organobromines, spent aluminum potliners, and carbamates.

a. Methodology for Estimating the Affected Universe. In determining the costs, economic impacts, and benefits associated with today's rule, the Agency estimated the volumes of waste affected by today's rule. The procedure for estimating the volumes of ICR waste and TC organic and pesticide waste, and newly listed wastes affected by today's rule is summarized below.

First, the Agency examined all industries which might be likely to produce wastes covered under today's standards. Through reviewing comments to the Supplemental Notice of Data Availability published by the Agency in 1993, reviewing runs from the Biennial Reporting System (BRS) of volumes generated from particular industry sectors, as well as discussions with industry, and discussions with the Office of Water at EPA HQ, the Agency narrowed it down to 16 industries which would potentially have significant volumes of wastewater affected by today's rule.

Using a host of databases and/or sources, the Agency collected data on the quantities, constituents, and concentrations of the volumes affected from each of the 16 industries. In addition, the Agency gathered any data on current management practices, plant design, etc. The following sources were used: Section 308 data from the Office of Water, Industrial Studies Database (ISDB), 1991 Biennial Reporting System (BRS), primary summary and development documents from effluent guidelines, Toxicity Characteristic Regulatory Impact Analysis documents, data gathered in the capacity analysis performed for today's rule, as well as comments from potentially affected industries.

The Agency obtained volume information for the newly listed wastes—organobromines (K140), spent aluminum potliners (K088), and carbamate wastes (K156–161)—from the listing documents prepared for these wastes during the listing procedure.

b. Cost Methodology. The cost analysis estimates the national level incremental costs which will be incurred as a result of today's rule. The cost estimates for both the baseline and post-regulatory scenarios are calculated employing: (i) The facility wastestream volume, (ii) the management practice (baseline or post-regulatory) assigned to that wastestream, and (iii) the unit cost associated with that practice. Summing the costs for all facilities produces the total costs for the given waste and scenario. Subtracting the baseline cost from the post-regulatory cost produces the national incremental cost associated with today's rule for the given waste.

The cost methodology section includes three subsections: (i) ICR and TC Pesticide and Organic Wastes Managed in CWA and CWA-Equivalent Systems, (ii) Newly Listed Wastes, (iii) Testing and Recordkeeping Costs. (The costs for wastes managed in Class I nonhazardous waste deep wells are discussed in section B.)

(i) ICR and TC Pesticide and Organic Wastes Managed in CWA and CWA-Equivalent Systems. The Agency employed the following approach to estimate the incremental costs for the ICR and TC wastes. First, using information available on the affected industries, the Agency created average-sized model facilities for each industry. Second, for a given model facility in an affected industry, the Agency used available unit cost data to develop costs for the baseline management practices (usually treatment in surface impoundments followed by discharge into receiving waters through a NPDES permit). Third, the Agency used data on the constituents and waste quantities for each industry, where applicable, to determine the necessary treatment required to reduce to UTS levels the constituents present. Fourth, the Agency used unit costs to develop costs for the post-regulatory management practices for the treatment requirements determined in the third step. Fifth, subtracting the baseline from the post-regulatory costs for an average facility in an industry sector and using the data available on the number of facilities affected within each industry, the Agency was able calculate the incremental cost for a given industry. Sixth, summing costs across affected industries, the Agency determined the incremental cost for the rule for the end-of-pipe treatment standards.

(ii) Newly Listed Wastes. The costs for treatment of organobromines (K140), spent aluminum potliners (K088), and carbamate wastes (K156–161) will be determined using data from the listings on baseline management practices, judgment on the technology(s) required to meet the UTS standards for these wastes, and available unit cost data.

(iii) Testing and Recordkeeping Costs. Testing and recordkeeping costs, including costs that facilities will incur for ensuring that hazardous constituents

in characteristic waste are meeting new treatment standards and costs associated with permit modifications will be based upon an average, one-time testing cost and an Information Collection Request, respectively.

c. Economic Impact Methodology. The economic effects of today's proposed rule are defined as the difference between the industrial activity under post-regulatory conditions and the industrial activity in the absence of regulation (i.e., baseline conditions).

The Agency used (1) historic average capital expenditures for each industry, (2) historic average operating expenditures for each industry, (3) historic revenues, and (4) historic average pollution abatement and control expenditures (PACE) to determine the economic impacts. However, the Agency was unable to examine the impacts on a facility-specific basis due to lack of data. Therefore, the impacts are assessed on an industry-specific basis.

d. Benefits Methodology. The approach for estimating benefits associated with today's rule involves three components: (i) estimation of pollutant loadings reductions, (ii) estimation of reductions in exceedances of health-based levels, and, (iii) qualitative description of the potential benefits. The benefits assessment is based upon the waste quantity and concentration data collected for the cost analysis. This incremental assessment focuses upon reductions in toxic concentrations at the point of discharge and does not consider any potential benefits resulting from reductions in air emissions or impacts on impoundment leaks and sludges which may occur as part of treating wastes to comply with the LDRs.

EPA has not conducted an assessment of the benefits related to the effects of the proposed rule on newly listed wastes. These benefits depend on the incremental risk reductions that may result from treatment of the wastes prior to disposal at a subtitle C facility. EPA data indicate that between 100,000 and 118,000 tons of spent aluminum potliners are generated annually. Improper management of these wastes has caused many serious past damage incidents. (See listing Background Document for K088). However, data are limited with regard to current management practices and risk levels for these wastes. Therefore, EPA is not yet able to evaluate the benefits resulting under the proposed rule for these wastes. Because the quantity of waste is very small, benefits for newly listed organobromine and carbamate wastes are expected to be minimal.

(i) Estimation of Pollutant Loadings Reductions. An incremental approach was used to estimate reductions in pollutant loadings. For the baseline scenario, contaminant concentrations were based upon data or estimates of current effluent discharge concentration levels. For the post-regulatory scenario, concentration levels were assumed to equal UTS levels.

(ii) Estimation of Reductions in Exceedances of Health-Based Levels. The methods used for evaluating the benefits associated with cancer and noncancer risk reductions resulting from the proposed rule entail comparing constituent concentration levels to health-based standards to evaluate whether implementation of the proposed rule reduces concentration levels below levels that pose risk to human health.

To estimate benefits from cancer risk reductions resulting from the proposed rule, a simple screening analysis was performed. This analysis compared contaminant concentrations for the baseline and post-regulatory scenario to health-based levels for carcinogens. Further analysis may be undertaken to quantify benefits associated with facility/ wastestream combinations identified in the contaminant concentration comparisons.

Benefits associated with reductions in non-cancer exceedances are estimated based upon comparisons of contaminant concentration levels in effluent discharges of the affected wastestreams to the reference health levels. These benefits are expressed in terms of the number of exceedances of health-based levels under the baseline scenario compared to the number of exceedances under the proposed rule.

(iii) Qualitative Description of the Potential Benefits. A qualitative assessment of potential benefits likely to result from the proposed rule is used where data are limited. The Agency acknowledges limited data availability in developing waste volumes affected, constituents, concentrations, cost estimates, economic impacts, and benefits estimates for the proposed LDR Phase III rulemaking. The Agency respectfully requests comment from industry regarding constituents, concentrations, waste volumes, and current management practices.

2. Results

a. *Volume Results.* The Agency has estimated the volumes of formerly characteristic wastes potentially affected by today's rule to total in the range of 33.5 to 500 million tons. The Agency requests comment on waste volumes affected by the proposed LDR Phase III rule. For newly listed wastes, the analyses supporting the listing determination showed about 4,500 tons of carbamate wastes, less than 100 tons of organobromine wastes, and 100,000 to 118,000 tons of spent aluminum potliners are potentially affected by this rule.

b. *Cost Results.* For characteristic wastes, the potential cost impacts of this rule depend on whether facilities' current wastewater treatment systems will meet the UTS levels or if additional treatment will be required. If current treatments are adequate, facilities will only incur administrative costs to have their permits revised. A rough estimate would be that there would be one-time incremental costs of $0.9 to $2.9 million for all incrementally impacted facilities. However, at the high end, if current wastewater treatment systems need to be augmented with additional treatment steps, the incremental compliance costs could be as high as $1 million per affected facility. The Agency does not have adequate data to estimate how many, if any, facilities may require modification to their treatment facilities. The Agency requests comment and data on how often additional treatment may be required.

For newly listed wastes, the costs are substantially higher and will be incurred each year. These costs range from approximately $11.9 million to $47.3 million and are attributable primarily to thermal treatment of spent aluminum potliner wastes (K088). The Agency requests comment on these estimates.

c. *Economic Impact Results.* The Agency has estimated the economic impacts of today's rule to represent less than one percent of historic pollution control and operating costs for the organic chemical and petroleum refining industries. However, for those facilities that may need to treat to UTS to comply with today's rule, costs could be more significant. The estimated compliance costs for treating newly listed spent aluminum potliners represents 40 percent of pollution control operating costs for aluminum reducers; however, treatment costs represent only one percent of total historic operating costs. The Agency requests comment on anticipated economic impacts resulting from the proposed LDR Phase III rule.

d. *Benefit Estimate Results.* The Agency has estimated the benefits associated with today's rule to be small. Assuming facilities comply with the proposed rule by treating their affected wastestreams, loadings reductions

estimates range between 36 and 407 tons per year for direct dischargers, and between 1,490 and 24,391 tons per year for indirect dischargers. For direct dischargers, loadings reductions represent between .03 to .30 percent of total Toxic Release Inventory (TRI) chemical loadings to surface waters. For indirect dischargers, loadings reductions represent between .8 and 12.8 percent of all TRI loadings transferred to POTWs. Based upon the results of this screening, and more detailed risk assessments, the estimated baseline risks associated with only four wastestreams exceed commonly assumed threshold cancer and noncancer risk levels. EPA estimated that three wastestreams containing aniline pose baseline cancer risks ranging from 1×10^{-5} to 1×10^{-4} which potentially would be reduced to between 8×10^{-8} and 3×10^{-6} under the Phase III rule. A fourth wastestream containing acrylamide poses baseline cancer risk at a level of 2×10^{-3}. The proposed rule is estimated to reduce this risk to between 2×10^{-4} and 4×10^{-3}. All four of these wastestreams are currently discharged to POTWs; if POTW treatment removes these constituents from the wastewater prior to discharge to surface water and/or if no drinking water intake is located downstream from the POTW's outfall, baseline risks will be lower than those estimated above. The Agency requests comment and any available information related to these wastestreams.

B. Regulatory Impact Analysis for Underground Injected Wastes

The Agency has completed a separate regulatory impact analysis for underground injected wastes affected by the LDR Phase III proposed rule. This analysis describes and evaluates the regulatory impacts only to the Class I injection well universe. The new proposed Phase III LDRs cover decharaterized ICR and TC organic wastes, and other newly-identified hazardous wastes that are distinctly industrial wastes injected by owners and operators of only Class I hazardous and non-hazardous injection wells.

According to the available data outlined in the RIA, indications are that of the 223 Class I injection facilities in the nation, up to 154 could be affected by the new Phase III LDRs. Of these facilities, 101 inject nonhazardous waste and 53 inject hazardous waste. Combined, these facilities may inject up to 14 billion gallons of waste annually into Class I wells. These Class I injection facilities will now be required to either treat wastes, or file no migration petitions as outlined in 40 CFR 148 (See 53 FR 28118 (July 26, 1988)) preamble for a more thorough discussion of the no migration petition review process). Additional options for compliance with the proposed Phase III LDRs, including a *de minimis* exemption and a pollution prevention option are discussed in more detail in the RIA.

Of these newly affected Class I facilities, 38 already have no migration exemptions approved by EPA, but may face additional requirements requiring some modifications of their petitions due to the proposed LDR Phase III rule. For the facilities which do not have approved no migration exemptions, today's proposed rule will add compliance costs to those currently incurred as a result of previous rulemakings. The Agency analyzed costs and benefits for today's rule by using the same approach and methodology developed in the *Regulatory Impact Analysis of the Underground Injection Control Program: Proposed Hazardous Waste Disposal Injection Restrictions* used for the final rule (53 FR 28118) and subsequent rulemaking. An analysis was performed to assess the economic effect of associated compliance costs for the additional volumes of injected wastes attributable to this proposed rule.

In general, Class I injection facilities affected by the LDR Phase III rule will have several options. As previously mentioned, some facilities will modify existing no migration petitions already approved by the Agency, other facilities may submit entirely new petitions, and still others may accept the prohibitions and either continue to inject wastes after treatment or cease injection operations altogether, EPA assessed compliance costs for Class I facilities submitting no-migration petitions, employing alternative treatment, and/or implementing pollution prevention measures. Although facilities using pollution prevention/waste minimization to comply with the Phase III LDRs will likely lower overall regulatory compliance costs, these situations are site-specific and, therefore, EPA cannot estimate these cost savings.

For Class I facilities opting to use alternative treatment, the Agency derived costs for both treating wastes on-site, and/or shipping wastes and treating them off-site at a commercial facility. However, the Agency believes that transportation of large volumes of liquid wastes off-site is not practical. This makes the off-site treatment scenario, at best, a highly conservative analysis. EPA expects most facilities that treat their wastes will do so on-site. Preliminary EPA estimates show that the total annual compliance cost for petitions and alternative on-site treatment to industry affected by the new LDR Phase III prohibitions will range between $9.2 million to $13.2 million. The noncommercial facilities choosing to segregate their wastes may incur additional costs totaling $2.98 million. The average annual compliance costs per affected facility employing on-site alternative treatment ranges from $59,740 to $85,714. The overall annual regulatory compliance cost to industry for petitions and alternatively treating wastes off-site will range between $486.5 million to $805.3 million. The range of costs for alternative treatment is the result of applying a sensitivity analysis. Only the incremental treatment costs for the new waste listings are calculated in this RIA. All of these costs will be incurred by Class I injection well owners and operators. The estimated economic impacts of the proposed rule were based on the random assignment of injection facilities to petition and treatment outcomes using a decision tree analysis method described in the RIA. The Agency requests comment as to how frequently facilities with Class I nonhazardous injection wells will be able to receive a no-migration variance. The Agency also requests comment on how frequently owners will choose to treat their waste and whether that treatment will occur on-site.

The benefits to human health and the environment in the RIA are generally defined as reduced human health risk resulting from fewer instances of ground water contamination. In general, potential health risks from Class I injection wells are extremely low. EPA conducted a preliminary quantitative assessment of the potential human health risks associated with two worst-case scenarios involving well malfunction. EPA applied the approach taken in an earlier study to measure health risks of two LDR Phase III contaminants: benzene and carbon tetrachloride. The results of this preliminary analysis show that all of the cancer and noncancer risks calculated are below regulatory concern, with the exception of the cancer risk and hazard index calculated for carbon tetrachloride, assuming an abandoned borehole is near the injection well, drinking water pumping is occurring, and the local geology is typical of the East Gulf Coast Region. The assumptions used in deriving these results were based on conservative, upper-bound estimates. The Agency intends to expand this analysis in the final rule to include other constituents

and facilities. The Agency is interested in comments on this methodology and any data on actual injection volumes and constituents.

The economic analysis of LDR Phase III compliance costs suggests that publicly traded companies affected by the rule will probably not be significantly economically impacted. The limited data available for the privately held companies suggests, however, that they may face significant impacts due to the proportionally larger expenses they may face as a result of the proposed rule.

C. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, when an agency publishes a notice of rulemaking, for a rule that will have a significant effect on a substantial number of small entities, the agency must prepare and make available for public comment a regulatory flexibility analysis that considers the effect of the rule on small entities (i.e.: small businesses, small organizations, and small governmental jurisdictions). Under the Agency's Revised Guidelines for Implementing The Regulatory Flexibility Act (May 4, 1992), the Agency committed to considering regulatory alternatives in rulemakings when there were any economic impacts estimated on any small entities. See RCRA sections 3004(d), (e), and (g)(5), which apply uniformly to all hazardous wastes. Previous guidance required regulatory alternatives to be examined only when significant economic effects were estimated on a substantial number of small entities.

In assessing the regulatory approach for dealing with small entities in today's proposed rule, for both surface disposal of wastes and underground injection control, the Agency considered two factors. First, data on potentially affected small entities are unavailable. Second, due to the statutory requirements of the RCRA LDR program, no legal avenues exist for the Agency to provide relief from the LDR's for small entities. The only relief available for small entities is the existing small quantity generator provisions and conditionally exempt small quantity generator exemptions found in 40 CFR 262.11-12, and 261.5, respectively. These exemptions basically prescribe 100 kg per calendar month generation of hazardous waste as the limit below which one is exempted from complying with the RCRA standards.

Given these two factors, the Agency was unable to frame a series of small entity options from which to select the lowest cost approach; rather, the Agency was legally bound to regulate the land disposal of the hazardous wastes covered in today's rule without regard to the size of the entity being regulated. See also § 268.1(c)(1), which states that LDR rules do not apply to small quantity generators.

D. Paperwork Reduction Act

The new information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Four Information Collection Request (ICR) documents has been prepared by EPA, covering the three programs impacted (i.e., the LDR program, the UIC program, and the CWA NPDES program: LDR ICR# 1442.08; UIC ICR# 1738.01; NPDES Application ICR# 0226.11; and NPDES Discharge Monitoring Report ICR# 0229.10). The overall reporting and recordkeeping burden is estimated to be approximately 632,500 hours (sum from the four ICRs). The average burden per respondent is slightly more than 4,000 hours (sum from the four ICRs.). Only incremental burdens are discussed in the ICRs. These incremental burdens will eventually be merged with: the UIC program ICR, the LDR program ICR, the NPDES permit program ICR, and the Discharge Monitoring Report program ICR.

The public reporting burden for these collections is estimated to average: for the LDR program, 75 hours per respondent; for the UIC program, 3800 hours per respondent; for the NPDES application program, 37.5 hours per respondent; and for the NPDES discharge monitoring report, 211.5 hours per respondent. This includes time for reviewing instructions, gathering and compiling data, maintaining the data, and preparing and submitting all data.

A copy of the ICRs for this rule may be obtained from the Sandy Farmer, Environmental Protection Agency, Information Policy Branch, 401 M Street, S.W. (Mail Code 2136), Washington D.C. 20460 or by calling (202) 260-2740. The public should send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing burden to EPA; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20460, marked ''Attention: Desk Officer for EPA.''

List of Subjects

40 CFR Part 148

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 266

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Penalties, Reporting and recordkeeping requirements.

Dated: February 16, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Secs. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.

2. Section 148.1 is amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 148.1 Purpose, scope and applicability.

* * * * *

(a) This part identifies wastes that are restricted from disposal into Class I wells and defines those circumstances under which a waste, otherwise prohibited from injection, may be injected.

(b) The requirements of this part apply to owners or operators of Class I hazardous waste injection wells used to inject hazardous waste; and, owners or operators of Class I injection wells used to inject wastes which once exhibited a prohibited characteristic of hazardous waste identified in subpart C of part 261 of this chapter, at the point of generation, and no longer exhibit the characteristic at the point of injection.

* * * * *

(d) Wastes that are only characteristically hazardous and otherwise prohibited are not prohibited if the wastes are disposed into a nonhazardous injection well defined under 40 CFR 144.6(a) and do not

exhibit any prohibited characteristic of hazardous waste identified in subpart C of part 261 of this chapter, and do not contain any hazardous constituents identified in 40 CFR 268.48 diluted below the Universal Treatment Standard levels prior to injection.

3. Section 148.3 is revised to read as follows:

§ 148.3 Dilution prohibited as a substitute for treatment.

(a) The provisions of § 268.3 of this chapter shall apply to owners or operators of Class I wells used to inject a waste which is hazardous at the point of generation whether or not the waste is hazardous at the point of injection.

(b) Owners or operators of Class I nonhazardous waste injection wells which inject waste formerly exhibiting a hazardous characteristic which has been removed by dilution, may address underlying hazardous constituents by treating the hazardous waste, obtaining an exemption pursuant to a petition filed under § 148.20, or complying with the provisions set forth in § 268.9 of this chapter.

4. Section 148.4 is revised to read as follows:

§ 148.4 Procedures for case-by-case extensions to an effective date.

The owner or operator of a Class I hazardous or nonhazardous waste injection well may submit an application to the Administrator for an extension of the effective date of any applicable prohibition established under subpart B of this part according to the procedures of § 268.5 of this chapter.

5. Section 148.18 is added to subpart B to read as follows:

§ 148.18 Waste specific prohibitions—Newly Identified Wastes.

(a) On [*Insert date 90 days from date of publication of final rule*], the wastes specified in 40 CFR part 261.32 as EPA Hazardous waste numbers K088, K140, K156–K161, P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U277–U280, U364–U367, U372, U373, U375–U379, U381–387, U389–U396, U400–U404, and U407–U411 are prohibited from underground injection.

(b) On [*Insert date 2 years from effective date of the final rule*], the wastes specified in 40 CFR part 261 as EPA Hazardous waste numbers D018–043, and Mixed TC/Radioactive wastes, are prohibited from underground injection.

(c) On [*Insert date 2 years from effective date of the final rule*], the wastes specified in 40 CFR part 261 as EPA Hazardous waste numbers D001–D003 are prohibited from underground injection.

6. Section 148.20 is amended by revising paragraph (a) introductory text to read as follows:

§ 148.20 Petitions to allow injection of a waste prohibited under Subpart B.

(a) Any person seeking an exemption from a prohibition under subpart B of this part for the injection of a restricted hazardous waste, including a hazardous waste exhibiting a characteristic and containing underlying hazardous constituents at the point of generation, but no longer exhibiting a characteristic when injected into a Class I injection well or wells, shall submit a petition to the Director demonstrating that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This demonstration requires a showing that:

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

7. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

8. In Subpart C, § 266.20, paragraph (b) is amended by adding one sentence to the end of the paragraph to read as follows:

§ 266.20 Applicability.

* * * * *

(b) * * * This provision does not apply to hazardous waste used as a fill material (i.e., a substitute for sand, dirt or comparable material) to fill in holes, occupy space, raise land levels, or be used for other similar purposes.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

9. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

10. Section 268.1 is amended by revising paragraph (e)(4) and by removing paragraph (e)(5) to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(e) * * *

(4) *De minimis* losses of characteristic wastes to wastewaters are defined as:

(i) Losses from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; rinsate from empty containers or from containers that are rendered empty by that rinsing; and laboratory wastes not exceeding one per cent of the flow of wastewater into the facility's headworks on an annual basis; or

(ii) Characteristic wastes which are injected into Class I nonhazardous wells whose combined volume is less than one per cent of the total flow at the wellhead on an annualized basis, and which any underlying hazardous constituents in the characteristic wastes are present at the point of generation at levels less than ten times the treatment standards found at § 268.48.

11. Section 268.2 is amended by revising the introductory text to paragraph (f), by removing paragraphs (f)(1), (f)(2), and (f)(3), and by adding paragraph (j) to read as follows:

§ 268.2 Definitions applicable in this part.

* * * * *

(f) *Wastewaters* are wastes that contain less than 1% by weight total organic carbon (TOC) and less than 1% by weight total suspended solids (TSS).

* * * * *

(j) *Inorganic metal-bearing waste* is one for which EPA has established treatment standards for metal hazardous constituents, and which does not otherwise contain significant organic or cyanide content as described in § 268.3(b)(1), and is specifically listed in appendix XI of this part.

12. Section 268.3 is revised to read as follows:

§ 268.3 Dilution prohibited as a substitute for treatment.

(a) No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with subpart D of this part, to circumvent the effective date of a prohibition in subpart C of this part, to otherwise avoid a prohibition in subpart C of this part, or to circumvent a land disposal

prohibition imposed by RCRA section 3004.

(b) Combustion of hazardous waste is prohibited, unless the waste, at the point of generation, or after any bona fide treatment such as cyanide destruction prior to combustion, can be demonstrated to comply with one or more of the following criteria (unless otherwise specifically prohibited from combustion):

(1) The waste contains hazardous organic constituents or cyanide at levels exceeding the constituent-specific treatment standard found in § 268.48;

(2) The waste consists of organic, debris-like materials (e.g., wood, paper, plastic, or cloth) contaminated with an inorganic metal-bearing hazardous waste;

(3) The waste, at point of generation, has reasonable heating value such as greater than or equal to 5000 BTU per pound;

(4) The waste is co-generated with wastes for which combustion is a required method of treatment;

(5) The waste is subject to Federal and/or State requirements necessitating reduction of organics (including biological agents); or

(6) The waste contains greater than 1% Total Organic Carbon (TOC).

13. Section 268.7 is amended by adding paragraph (b)(5)(v) to read as follows:

§ 268.7 Waste analysis and recordkeeping.

* * * * *

(b) * * *

(5) * * *

(v) For characteristic wastes D001, D002, D003 and D012–D043 that contain underlying hazardous constituents as defined in § 268.2(i) that are treated on-site to remove the hazardous characteristic and to treat underlying hazardous constituents to levels in § 268.48 Universal Treatment Standards, the certification must state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of 40 CFR 268.40 to remove the hazardous characteristic. This decharacterized waste contained underlying hazardous constituents that have been treated on-site to meet § 268.48 Universal Treatment Standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

* * * * *

§ 268.8 [Removed and Reserved]

14. Section 268.8 is removed and reserved.

15. Section 268.9 is amended by revising paragraphs (a), (b), (d)(1)(i), (d)(1)(ii), (d)(2) introductory text; and by adding paragraphs (d)(3), (e) and (f) to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. For purposes of part 268, the waste will carry the waste code for any applicable listing under 40 CFR part 261, subpart D. In addition, the waste will carry one or more of the waste codes under 40 CFR part 261, subpart C, where the waste exhibits a characteristic, except in the case when the treatment standard for the waste code listed in 40 CFR part 261, subpart D operates in lieu of the standard for the waste code under 40 CFR part 261, subpart C, as specified in paragraph (b) of this section. If the generator determines that his waste displays a hazardous characteristic (and the waste is not a D004—D011 waste, a High TOC D001, or is not treated by CMBST, or RORGS of § 268.42, Table 1), the generator must determine what underlying hazardous constituents (as defined in § 268.2 of this Part), are reasonably expected to be present above the universal treatment standards found in § 268.48 of this part.

(b) Where a prohibited waste is both listed under 40 CFR part 261, subpart D and exhibits a characteristic under 40 CFR part 261, subpart C, the treatment standard for the waste code listed in 40 CFR part 261, subpart D will operate in lieu of the standard for the waste code under 40 CFR part 261, subpart C, provided that the treatment standard for the listed waste includes a treatment standard for the constituent that causes the waste to exhibit the characteristic and for any underlying hazardous constituents reasonably expected to be present in the waste. Otherwise, the waste must meet the treatment standards for all applicable listed and characteristic waste codes.

* * * * *

(d) * * *

(1) * * *

(i) For characteristic wastes other than those managed on-site in a wastewater treatment system subject to the Clean Water Act (CWA), zero-dischargers engaged in CWA-equivalent treatment, or Class I nonhazardous injection wells, the name and address of the Subtitle D facility receiving the waste shipment;

(ii) For all characteristic wastes, a description of the waste as initially generated, including the applicable EPA Hazardous Waste Number(s), treatability group(s), and underlying hazardous constituents;

(2) The certification must be signed by an authorized representative and must state the language found in § 268.7(b)(5).

* * * * *

(3) For characteristic wastes whose ultimate disposal will be into a Class I nonhazardous injection well, and compliance with the treatment standards found in § 268.48 for underlying hazardous constituents is achieved through pollution prevention, the following information must also be included:

(i) A description of the pollution prevention mechanism;

(ii) The mass of each underlying hazardous constituent before pollution prevention;

(iii) The mass of each underlying hazardous constituent that must be removed, normalized for production; and,

(iv) The mass reduction of each underlying hazardous constituent that is achieved.

(e) For decharacterized wastes managed on-site in a wastewater treatment system subject to the Clean Water Act (CWA), zero-dischargers engaged in CWA-equivalent treatment, or Class I nonhazardous injection wells, compliance with the treatment standards found at § 268.48 must be monitored quarterly. Monitoring results must be kept in on-site files for 5 years.

(f) For characteristic wastes whose ultimate disposal will be into a Class I nonhazardous injection well which qualifies for the de minimis exclusion described in § 268.1, information supporting that qualification must be kept in on-site files.

§ 268.10—§ 268.12 [Removed and Reserved]

16. Sections 268.10 through 268.12 are removed and reserved.

17. In subpart C, § 268.39 is added to read as follows:

* * * * *

§ 268.39 Waste specific prohibitions—spent aluminum potliners, carbamates and organobromine wastes.

(a) On [*Insert date 90 days from date of publication of the final rule*], the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K088, K140, K156–K161; and in 40 CFR 261.33 as EPA Hazardous Waste numbers P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U277–U280, U364–U367, U372, U373, U375–U379, U381–U387, U389–U396, U400–U404, and U407–U411 are prohibited from land disposal. In addition, soil and debris contaminated

with these wastes are prohibited from land disposal.

(b) On [*Insert date two years from date of publication of the final rule*], characteristic wastes that are managed in systems whose discharge is regulated under the Clean Water Act (CWA), or that are zero dischargers that engage in CWA-equivalent treatment before ultimate land disposal, are prohibited from land disposal. Radioactive wastes mixed with K088, K140, K156–K161, P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U277–U280, U364–U367, U372, U373, U375–U379, U381–U387, U389–U396, U400–U404, and U407–U411 are also prohibited from land disposal. In addition, soil and debris contaminated with these radioactive mixed wastes are prohibited from land disposal.

(c) Between [*Insert date 90 days from date of publication of the final rule*] and [*Insert date two years from date of publication of the final rule*], the wastes included in paragraph (b) of this section may be disposed in a landfill or surface impoundment, only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(d) The requirements of paragraphs (a), (b), and (c) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under § 268.44;

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(e) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable subpart D levels, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

18. The table in § 268.40 is amended as follows:

a. By revising the entries for D001 through F012, F037 through F039, K006, K018, K019, K028, K030, K035, K048 through K052, K061, K083, K086, K101, K102, P003, P013, P056, U038, U042, U093, U134, and U168.

b. By adding in alpha-numerical order entries for K088, K140, K156 through K161, P127, P128, P185, P188 through P192, P194, P196 through P199, P201 through P205, U271, U277 through U280, U364 through U367, U372, U373, U375 through U379, U381 through U387, U389 through U396, U400 through U404, and U407 through U411.

§ 268.40 Applicability of treatment standards.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
D001	Ignitable Characteristic Wastes, except for the § 261.21(a)(1) High TOC Subcategory.	NA	NA	DEACT and meet § 268.48 standards; or RORGS; or CMBST.	DEACT and meet § 268.48 standards; or RORGS; or CMBST.
	High TOC Ignitable Characteristic Liquids Subcategory based on 40 CFR 261.21(a)(1)—Greater than or equal to 10% total organic carbon. (Note: This subcategory consists of nonwastewaters only.).	NA	NA	NA	RORGS; or CMBST.
D002	Corrosive Characteristic Wastes	NA	NA	DEACT and meet § 268.48 standards.	DEACT and meet § 268.48 standards.
D002, D004, D005, D006, D007, D008, D009, D010, D011.	Radioactive high level wastes generated during the reprocessing of fuel rods. (Note: This subcategory consists of nonwastewaters only.).	Corrosivity (pH)	NA	NA	HLVIT.
		Arsenic	7440–38–2	NA	HLVIT.
		Barium	7440–39–3	NA	HLVIT.
		Cadmium	7440–43–9	NA	HLVIT.
		Chromium (Total)	7440–47–3	NA	HLVIT.
		Lead	7439–92–1	NA	HLVIT.
		Mercury	7439–97–6	NA	HLVIT.
		Selenium	7782–49–2	NA	HLVIT.
		Silver	7440–22–4	NA	HLVIT.
D003	Reactive Sulfides Subcategory based on § 261.23(a)(5).	NA	NA	DEACT and meet § 268.48 standards.	DEACT and meet § 268.48 standards.
	Explosives Subcategory based on § 261.23(a)(6), (7), and (8).	NA	NA	DEACT and meet § 268.48 standards.	DEACT and meet § 268.48 standards.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
	Other Reactives Subcategory based on § 261.23(a)(1).	NA	NA	DEACT and meet § 268.48 standards.	DEACT and meet § 268.48 standards.
	Water Reactive Subcategory based on § 261.23(a)(2), (3), and (4). (Note: This subcategory consists of nonwastewaters only.).	NA	NA	NA	DEACT and meet § 268.48 standards.
	Reactive Cyanides Subcategory based on § 261.23(a)(5).	Cyanides (Total) [7]	57–12–5	Reserved	590.
		Cyanides (Amenable) [7]	57–12–5	0.86	30.
D004	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for arsenic based on the extraction procedure (EP) in SW846 Method 1310.	Arsenic	7440–38–2	5.0	5.0 mg/l EP.
		Arsenic; altermate[6] standard for nonwastewaters only.	7440–38–2	NA	5.0 mg/l TCLP.
D005	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for barium based on the extraction procedure (EP) in SW846 Method 1310.	Barium	7440–39–3	100	100 mg/l TCLP.
D006	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for cadmium based on the extraction procedure (EP) in SW846 Method 1310.	Cadmium	7440–43–9	NA	1.0 mg/l TCLP.
	Cadmium Containing Batteries Subcategory. (Note: This subcategory consists of nonwastewaters only.).	Cadmium	7440–43–9	NA	RTHRM.
D007	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for chromium based on the extraction procedure (EP) in SW846 Method 1310.	Chromium (Total)	7440–47–3	5.0	5.0 mg/l TCLP.
D008	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for lead based on the extraction procedure (EP) in SW846 Method 1310.	Lead	7439–92–1	5.0	5.0 mg/l EP.
		Lead; altermate[6] standard for nonwastewaters only.	7439–92–1	NA	5.0 mg/l TCLP.
	Lead Acid Batteries Subcategory (Note: This standard only applies to lead acid batteries that are identified as RCRA hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions of 40 CFR 268 or exempted under other EPA regulations (see 40 CFR 266.80). This subcategory consists of nonwastewaters only.).	Lead	7439–92–1	NA	RLEAD.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
	Radioactive Lead Solids Subcategory (Note: these lead solids include, but are not limited to, all forms of lead shielding and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stabilization, nor do they include organo-lead materials that can be incinerated and stabilized as ash. This subcategory consists of nonwastewaters only.).	Lead	7439–92–1	NA	MACRO.
D009	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain greater than or equal to 260 mg/kg total mercury that also contain organics and are not incinerator residues. (High Mercury-Organic Subcategory).	Mercury	7439–97–6	NA	IMERC; or RMERC.
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain greater than or equal to 260 mg/kg total mercury that are inorganic, including incinerator residues and residues from RMERC. (High Mercury-Inorganic Subcategory).	Mercury	7439–97–6	NA	RMERC.
	Nonwastewaters that exhibit, or are expected to exhibit, the characterisitc of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain less than 260 mg/kg total mercury. (Low Mercury Subcategory).	Mercury	7439–97–6	NA	0.20 mg/l TCLP.
	All D009 wastewaters.	Mercury	7439–97–6	0.20	NA.
	Elemental mercury contaminated with radioactive materials. (Note: This subcategory consists of nonwastewaters only.).	Mercury	7439–97–6	NA	AMLGM.
	Hydraulic oil contaminated with Mercury Radioactive Materials Subcategory. (Note: This subcategory consists of nonwastewaters only.).	Mercury	7439–97–6	NA	IMERC.
D010	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for selenium based on the extraction procedure (EP) in SW846 Method 1310.	Selenium	7782–49–2	1.0	5.7 mg/l TCLP.
D011	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for silver based on the extraction procedure (EP) in SW846 Method 1310.	Silver	7440–22–4	5.0	5.0 mg/l TCLP.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
D012	Wastes that are TC for Endrin based on the TCLP in SW846 Method 1311.	Endrin	72–20–8	BIODG; or INCIN .	0.13 and meet § 268.48 standards.
		Endrin aldehyde	7421–93–4	BIODG; or INCIN .	0.13 and meet § 268.48 standards.
D013	Wastes that are TC for Lindane based on the TCLP in SW846 Method 1311.	alpha-BHC	319–84–6	CARBN; or INCIN	0.066 and meet § 268.48 standards.
		beta-BHC	319–85–7	CARBN; or INCIN	0.066 and meet § 268.48 standards.
		delta-BHC	319–86–8	CARBN; or INCIN	0.066 and meet § 268.48 standards.
		gamma-BHC (Lindane)	58–89–9	CARBN; or INCIN	0.066 and meet § 268.48 standards.
D014	Wastes that are TC for Methoxychlor based on the TCLP in SW846 Method 1311.	Methoxychlor	72–43–5	WETOX or INCIN .	0.18 and meet § 268.48 standards.
D015	Wastes that are TC for Toxaphene based on the TCLP in SW846 Method 1311.	Toxaphene	8001–35–2	BIODG or INCIN ..	2.6 and meet § 268.48 standards.
D016	Wastes that are TC for 2,4-D (2,4-Dichlorophenoxyacetic acid) based on the TCLP in SW846 Method 1311.	2,4-D (2,4-Dichlorophenoxyacetic acid).	94–75–7	CHOXD, BIODG, or INCIN.	10 and meet § 268.48 standards.
D017	Wastes that are TC for 2,4,5-TP (Silvex) based on the TCLP in SW846 Method 1311.	2,4,5-TP (Silvex)	93–72–1	CHOXD or INCIN .	7.9 and meet § 268.48 standards.
D018	Wastes that are TC for Benzene based on the TCLP in SW846 Method 1311.	Benzene	71–43–2	0.14 and meet § 268.48 standards.	10 and meet § 268.48 standards.
D019	Wastes that are TC for Carbon tetrachloride based on the TCLP in SW846 Method 1311.	Carbon tetrachloride	56–23–5	0.057 and meet § 268.48 standards.	6.0 and meet § 268.48 standards.
D020	Wastes that are TC for Chlordane based on the TCLP in SW846 Method 1311.	Chlordane (alpha and gamma isomers).	57–74–9	0.0033 and meet § 268.48 standards.	0.26 and meet § 268.48 standards.
D021	Wastes that are TC for Chlorobenzene based on the TCLP in SW846 Method 1311.	Chlorobenzene	108–90–7	0.057 and meet § 268.48 standards.	6.0 and meet § 268.48 standards.
D022	Wastes that are TC for Chloroform based on the TCLP in SW846 Method 1311.	Chloroform	67–66–3	0.046 and meet § 268.48 standards.	6.0 and meet § 268.48 standards.
D023	Wastes that are TC for o-Cresol based on the TCLP in SW846 Method 1311.	o-Cresol	95–48–7	0.11 and meet § 268.48 standards.	5.6 and meet § 268.48 standards.
D024	Wastes that are TC for m-Cresol based on the TCLP in SW846 Method 1311.	m-Cresol (difficult to distinguish from p-cresol).	108–39–4	0.77 and meet § 268.48 standards.	5.6 and meet § 268.48 standards.
D025	Wastes that are TC for p-Cresol based on the TCLP in SW846 Method 1311.	p-Cresol (difficult to distinguish from m-cresol).	106–44–5	0.77 and meet § 268.48 standards.	5.6 and meet § 268.48 standards.
D026	Wastes that are TC for Cresols (Total) based on the TCLP in SW846 Method 1311.	Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations).	1319–77–3	0.88 and meet § 268.48 standards.	11.2 and meet § 268.48 standards.
D027	Wastes that are TC for p-Dichlorobenzene based on the TCLP in SW846 Method 1311.	p-Dichlorobenzene (1,4-Dichlorobenzene).	106–46–7	0.090 and meet § 268.48 standards.	6.0 and meet § 268.48 standards.
D028	Wastes that are TC for 1,2-Dichloroethane based on the TCLP in SW846 Method 1311.	1,2-Dichloroethane	107–06–2	0.21 and meet § 268.48 standards.	6.0 and meet § 268.48 standards.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
D029	Wastes that are TC for 1,1-Dichloroethylene based on the TCLP in SW846 Method 1311.	1,1-Dichloroethylene	75–35–4	0.025 and meet § 268.48 standards.	6.0 and meet § 268.48 standards.
D030	Wastes that are TC for 2,4-Dinitrotoluene based on the TCLP in SW846 Method 1311.	2,4-Dinitrotoluene	121–14–2	0.32 and meet § 268.48 standards.	140 and meet § 268.48 standards.
D031	Wastes that are TC for Heptachlor based on the TCLP in SW846 Method 1311.	Heptachlor	76–44–8	0.0012 and meet § 268.48 standards.	0.066 and meet § 268.48 standards.
		Heptachlor epoxide	1024–57–3	0.016 and meet § 268.48 standards.	0.066 and meet § 268.48 standards.
D032	Wastes that are TC for Hexachlorobenzene based on the TCLP in SW846 Method 1311.	Hexachlorobenzene	118–74–1	0.055 and meet § 268.48 standards.	10 and meet § 268.48 standards.
D033	Wastes that are TC for Hexachlorobutadiene based on the TCLP in SW846 Method 1311.	Hexachlorobutadiene	87–68–3	0.055 and meet § 268.48 standards.	5.6 and meet § 268.48 standards.
D034	Wastes that are TC for Hexachloroethane based on the TCLP in SW846 Method 1311.	Hexachloroethane	67–72–1	0.055 and meet § 268.48 standards.	30 and meet § 268.48 standards.
D035	Wastes that are TC for Methyl ethyl ketone based on the TCLP in SW846 Method 1311.	Methyl ethyl ketone	78–93–3	0.28 and meet § 268.48 standards.	36 and meet § 268.48 standards.
D036	Wastes that are TC for Nitrobenzene based on the TCLP in SW846 Method 1311.	Nitrobenzene	98–95–3	0.068 and meet § 268.48 standards.	14 and meet § 268.48 standards.
D037	Wastes that are TC for Pentachlorophenol based on the TCLP in SW846 Method 1311.	Pentachlorophenol	87–86–5	0.089 and meet § 268.48 standards.	7.4 and meet § 268.48 standards.
D038	Wastes that are TC for Pyridine based on the TCLP in SW846 Method 1311.	Pyridine	110–86–1	0.014 and meet § 268.48 standards.	16 and meet § 268.48 standards.
D039	Wastes that are TC for Tetrachloroethylene based on the TCLP in SW846 Method 1311.	Tetrachloroethylene	127–18–4	0.056 and meet § 268.48 standards.	6.0 and meet § 268.48 standards.
D040	Wastes that are TC for Trichloroethylene based on the TCLP in SW846 Method 1311.	Trichloroethylene	79–01–6	0.054 and meet § 268.48 standards.	6.0 and meet § 268.48 standards.
D041	Wastes that are TC for 2,4,5-Trichlorophenol based on the TCLP in SW846 Method 1311.	2,4,5-Trichlorophenol	95–95–4	0.18 and meet § 268.48 standards.	7.4 and meet § 268.48 standards.
D042	Wastes that are TC for 2,4,6-Trichlorophenol based on the TCLP in SW846 Method 1311.	2,4,6-Trichlorophenol	88–06–2	0.035 and meet § 268.48 standards.	7.4 and meet § 268.48 standards.
D043	Wastes that are TC for Vinyl chloride based on the TCLP in SW846 Method 1311.	Vinyl chloride	75–01–4	0.27 and meet § 268.48 standards.	6.0 and meet § 268.48 standards.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
F001, F002, F003, F004 & F005.	F001, F002, F003, F004 and/or F005 solvent wastes that contain any combination of one or more of the following spent solvents: acetone, benzene, n-butyl alcohol, carbon disulfide, carbon tetrachloride, chlorinated fluorocarbons, chlorobenzene, o-cresol, m-cresol, p-cresol, cyclohexanone, o-dichlorobenzene, 2-ethoxyethanol, ethyl acetate, ethyl benzene, ethyl ether, isobutyl alcohol, methanol, methylene chloride, methyl ethyl ketone, methyl isobutyl ketone, nitrobenzene, 2-nitropropane, pyridine, tetrachloroethylene, toluene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,2-trichloro-1,2,2-trifluorethane, trichloroethylene, trichloromonofluoromethane, and/or xylenes [except as specifically noted in other subcategories]. See further details of these listings in § 261.31.	Acetone	67–64–1	0.28	160.
		Benzene	71–43–2	0.14	10.
		n-Butyl alcohol	71–36–3	5.6	2.6.
		Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP.
		Carbon tetrachloride	56–23–5	0.057	6.0.
		Chlorobenzene	108–90–7	0.057	6.0.
		o-Cresol	95–48–7	0.11	5.6.
		m-Cresol (difficult to distinguish from p-cresol)	108–39–4	0.77	5.6.
			106–44–5	0.77	5.6.
		p-Cresol (difficult to distinguish from m-cresol).	1319–77–3	0.88	11.2.
		Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)			
		Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP.
		o-Dichlorobenzene	95–50–1	0.088	6.0.
		Ethyl acetate	141–78–6	0.34	33.
		Ethyl benzene	100–41–4	0.057	10.
		Ethyl ether	60–29–7	0.12	160.
		Isobutyl alcohol	78–83–1	5.6	170.
		Methanol	67–56–1	5.6	0.75 mg/l TCLP.
		Methylene chloride	75–9–2	0.089	30.
		Methyl ethyl ketone	78–93–3	0.28	36.
		Methyl isobutyl ketone	108–10–1	0.14	33.
		Nitrobenzene	98–95–3	0.068	14.
		Pyridine	110–86–1	0.014	16.
		Tetrachloroethylene	127–18–4	0.056	6.0.
		Toluene	108–88–3	0.080	10.
		1,1,1-Trichloroethane	71–55–6	0.054	6.0.
		1,1,2-Trichloroethane	79–00–5	0.054	6.0.
		1,1,2-Trichloro-1,2,2-trifluoroethane.	76–13–1	0.057	30.
		Trichloroethylene	79–01–6	0.054	6.0.
		Trichloromonofluoromethane	75–69–4	0.020	30.
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations).	1330–20–7	0.32	30.
	F003 and/or F005 solvent wastes that contain any combination of one or more of the following three solvents as the only listed F001–5 solvents: carbon disulfide, cyclohexanone, and/or methanol. (formerly § 268.41(c)).	Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP.
		Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP.
		Methanol	67–56–1	5.6	0.75 mg/l TCLP.
	F005 solvent waste containing 2-Nitropropane as the only listed F001–5 solvent.	2-Nitropropane	79–46–9	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
	F005 solvent waste containing 2-Ethoxyethanol as the only listed F001–5 solvent.	2-Ethoxyethanol	110–80–5	BIODG: or INCIN .	INCIN.
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing or aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7]	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.
F007	Spent cyanide plating bath solutions from electroplating operations.	Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7]	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7]	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7]	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7]	57–12–5	0.86	30.
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7]	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7]	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
*	* *	*	*	*	*
F037	Petroleum refinery primary oil/water/solids separation sludge–Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non–contact once–through cooling waters segregated from treatment form other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.	Acenaphthene	83–32–9	0.059	3.4.
		Anthracene	120–12–7	0.059	3.4.
		Benzene	71–43–2	0.14	10.
		Benz(a)anthracene	56–55–3	0.059	3.4.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28.
		Chrysene	218–01–9	0.059	3.4.
		Di-n-butyl phthalate	84–74–2	0.057	28.
		Ethylbenzene	100–41–4	0.057	10.
		Fluorene	86–73–7	0.059	3.4.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Pyrene	129–00–0	0.067	8.2.
		Toluene	108–88–3	0.080	10.
		Xylenes-mixed isomers (sum of o-, m-, p-xylene concentrations).	1330–20–7 7440–47–3 57–12–5	0.32	30.
		Chromium (Total)	7439–92–1	2.77.	0.86 mg/l TCLP.
		Cyanides (Total) [7]	7440–02–0	1.2	590.
		Lead		0.69	0.37 mg/l TCLP.
		Nickel		3.98	5.0 mg/l TCLP.
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oil cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air floatation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological units) and F037, K048, and K051 are not included in this listing.	Benzene	71–43–2	0.14	10.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28.
		Chrysene	218–01–9	0.059	3.4.
		Di-n-butyl phthalate	84–74–2	0.057	28.
		Ethylbenzene	100–41–4	0.057	10.
		Fluorene	86–73–7	0.059	3.4.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Pyrene	129–00–0	0.067	8.2.
		Toluene	108–88–3	0.080	10.
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)..	1330–20–7 7440–47–3 57–12–5	0.32 2.77 1.2	30. 0.86 mg/l TCLP. 590.
		Chromium (Total)	7439–92–1	0.069	0.37 mg/l TCLP.
		Cyanides (Total) 7	7440–02–0	3.98	5.0 mg/l TCLP.
		Lead			
		Nickel			

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.).	Acenaphthylene	208–96–8	0.059	3.4.
		Acenaphthene	83–32–9	0.059	3.4.
		Acetone	67–64–1	0.28	160.
		Acetonitrile	75–05–8	5.6	38.
		Acetophenone	96–86–2	0.010	9.7.
		2-Acetylaminofluorene	53–96–3	0.059	140
		Acrolein	107–02–8	0.29	2.9.
		Acrylonitrile	107–13–1	0.24	84.
		Aldrin	309–00–2	0.021	0.066.
		4-Aminobiphenyl	92–67–1	0.13	13.
		Aniline	62–53–3	0.81	14.
		Anthracene	120–12–7	0.059	3.4.
		Aramite	140–57–8	0.36	2.5.
		alpha-BHC	319–84–6	0.00014	0.066.
		beta-BHC	319–85–7	0.00014	0.066.
		delta-BHC	319–86–8	0.023	0.066.
		gamma-BHC	58–89–9	0.0017	0.066.
		Benzene	71–43–2	0.14	10.
		Benz(a)anthracene	56–55–3	0.059	3.4.
		Benzo (b) fluoranthene (difficult to distinguiah from benzo (k) fluoranthene).	207–08–9	0.11	6.8.
		Benzo(g,h,i)perylene	191–24–2	0.0055	1.8.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		Bromodichloromethane	75–27–4	0.35	15.
		Methyl bromide (Bromomethane).	74–83–9	0.11	15.
		4-Bromophenyl phenyl ether	101–55–3	0.055	15.
		n-Butyl alcohol	71–36–3	5.6	2.6.
		Butyl benzyl ohthalate	85–68–7	0.017	28.
		2-sec-Butyl-4, 6-dinitrophenol (Dinoseb).	88–85–7	0.066	2.5.
		Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP.
		Carbon tetrachloride	56–23–5	0.057	6.0.
		Chlordane (alpha and gamma isomers).	57–74–9	0.0033	0.26.
		p-Chloroaniline	106–47–8	0.46	16.
		Chlorobenzene	108–90–7	0.057	6.0.
		Chlorobenzilate	510–15–6	0.10	6.6.
		2-Chloro-1, 3-butadiene	126–99–8	0.057	0.28.
		Chlorodibromomethane	124–48–1	0.057	15.
		Chloroethane	75–00–3	0.27	6.0.
		bis(2-Chloroethoxy)methane	111–91–1	0.036	7.2.
		bis(2-Chloroethyl)ether	111–44–4	0.033	6.0.
		Chloroform	67–66–3	0.046	6.0.
		bis(2-Chloroisopropyl)ether	39638–32–9	0.055	7.2.
		p-Chloro-m-cresol	59–50–7	0.018	14.
		Chloromethane (Methyl chloride).	74–87–3	0.19	30.
		2-Chloronaphthalene	91–58–7	0.055	5.6.
		2-Chlorophenol	95–57–8	0.044	5.7.
		3-Chloroprophylene	107–05–1	0.036	30.
		Chrysene	218–01–9	0.059	3.4.
		o-Cresol	95–48–7	0.11	5.6.
		m-Cresol (difficult to distinguish from p-cresol).	108–39–4	0.77	5.6.
		p-Cresol (difficult to distinguish from m-cresol.	106–44–5	0.77	5.6
		Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP.
		1,2-Dibromo-3-chloropropane.	96–12–8	0.11	15.
		Ethylene dibromide (1,2-Dibromoethane).	106–93–4	0.028	15.
		Dibromomethane	74–95–3	0.11	15.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as ''mg/l TCLP''; or technology code
		2,4-D (2,4-Dichlorophenoxyacetic acid).	94–75–7	0.72	10.
		o,p#-DDD	53–19–0	0.023	0.087.
		p,p#-DDD	72–54–8	0.023	0.087.
		o,p#-DDE	3424–82–6	0.031	0.087.
		p,p#-DDE	72–55–9	0.031	0.087.
		o,p#-DDT	789–02–6	0.0039	0.087.
		p,p#-DDT	50–29–3	0.0039	0.087.
		Dibenz(a,h) anthracene	53–70–3	0.055	8.2.
		Dibenz(a,e)pyrene	192–65–4	0.061	22.
		m-Dichlorobenzene	541–73–1	0.036	6.0.
		o-Dichlorobenzene	95–50–1	0.088	6.0.
		p-Dichlorobenzene	106–46–7	0.090	6.0.
		Dichlorodifluoromethane	75–71–8	0.23	7.2.
		1,1-Dichloroethane	75–34–3	0.059	6.0.
		1,2-Dichloroethane	107–06–2	0.21	6.0.
		1,1-Dichloroethylene	75–35–4	0.025	6.0.
		trans-1,2-Dichloroethylene	156–60–5	0.054	30.
		2,4-Dichlorophenol	120–83–2	0.044	14.
		2,6-Dichlorophenol	87–65–0	0.044	14.
		1,2-Dichloropropane	78–87–5	0.85	18.
		cis-1,3-Dichloropropylene	10061–01–5	0.036	18.
		trans-1,3-Dichloropropylene	10061–02–6	0.036	18.
		Dieldrin	60–57–1	0.017	0.13.
		Diethyl phthalate	84–66–2	0.20	28.
		2,4-Dimethyl phenol	105–67–9	0.036	14.
		Dimethyl phthalate	131–11–3	0.047	28.
		Di-n-butyl phthalate	64–74–2	0.057	28.
		1,4-Dinitrobenzene	100–25–4	0.32	2.3.
		4,6-Dinitro-o-cresol	534–52–1	0.28	160.
		2,4-Dinitrophenol	51–28–5	0.12	160.
		2,4-Dinitrotoluene	121–14–2	0.32	140.
		2,6-Dinitrotoluene	606–20–2	0.55	28.
		Di-n-octyl phthalate	117–84–0	0.017	28.
		Di-n-propylnitrosamine	621–64–7	0.40	14.
		1,4-Dioxane	123–91–1	8.67	170.
		Diphenylamine (difficult to distinguish from diphenylnitrosamine).	122–39–4	0.92	13.
		Diphenylnitrosamine (diffult to distinguish from diphenylamine).	86–30–6	0.92	13.
		1,2-Diphenylhydrazine	122–66–7	0.087	1.5.
		Disulfoton	298–04–4	0.017	6.2.
		Endosulfan I	939–98–8	0.023	0.066
		Endosulfan II	33213–6–5	0.029	0.13.
		Endosulfan sulfate	1–31–07–8	0.029	0.13.
		Endrin	72–20–8	0.0028	0.13.
		Endrin aldehyde	7421–93–4	0.025	0.13
		Ethyl acetate	141–78–6	0.34	33.
		Ethyl cyanide (Propanenitrile).	107–12–0	0.24	360.
		Ethyl benzene	100–41–4	0.057	10.
		Ethyl ether	60–29–7	0.12	160.
		bis(2-Ethylhexyl)phthalate	117–81–7	0.28	28.
		Ethyl methacrylate	97–63–2	0.14	160.
		Ethylene oxide	75–21–8	0.12	0.75.
		Famphur	52–85–7	0.017	15.
		Fluoranthene	206–44–0	0.068	3.4.
		Fluorene	86–73–7	0.059	3.4.
		Heptachlor	76–44–8	0.0012	0.066.
		Heptachlor epoxide	1024–57–3	0.016	0.066.
		Hexachlorobenzene	118–74–1	0.055	10.
		Hexachlorobutadiene	87–68–3	0.055	5.6.
		Hexachlorocyclopentadiene	77–47–4	0.057	2.4.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
		HxCDDs (All Hexachlorodibenzo-p-dioxins).	NA	0.000063	0.001.
		HxCDFs (All Hexachlorodibenzofurans).	NA	0.000063	0.001.
		Hexachloroethane	67–72–1	0.055	30.
		Hexachloropropylene	1888–71–7	0.035	30.
		Indeno (1,2,3-c,d) pyrene	193–39–5	0.0055	3.4.
		Iodomethane	74–88–4	0.19	65.
		Isobutyl alcohol	78–83–1	5.6	170.
		Isodrin	465–73–6	0.021	0.066.
		Isosafrole	120–58–1	0.081	2.6.
		Kepone	143–50–8	0.0011	0.13.
		Methacrylonitrile	126–98–7	0.24	84.
		Methanol	67–56–1	5.6	0.75 mg/l TCLP.
		Methapyrilene	91–80–5	0.081	1.5.
		Methoxychlor	72–43–5	0.25	0.18.
		3-Methylcholanthrene	56–49–5	0.0055	15.
		4,4-Methylene bis(2-chloroaniline).	101–14–4	0.50	30.
		Methylene chloride	75–09–2	0.089	30.
		Methyl ethyl ketone	78–93–3	0.28	36.
		Methyl isobutyl ketone	108–10–1	0.14	33.
		Methyl methacrylate	80–62–6	0.14	160.
		Methyl methansulfonate	66–27–3	0.018	4.6.
		Methyl parathion	298–00–0	0.014	4.6.
		Naphthalene	91–20–3	0.059	5.6.
		2-Naphthylamine	91–59–8	0.52	15.
		p-Nitroaniline	100–01–6	0.028	28.
		Nitrobenzene	98–95–3	0.068	14.
		5-Nitro-o-toluidine	99–55–8	0.32	28.
		p-Nitrophenol	100–02–7	0.12	29.
		N-Nitrosodiethylamine	55–18–5	0.40	28.
		N-Nitrosodimethylamine	62–75–9	0.40	2.3.
		N-Nitroso-di-n-butylamine	924–16–3	0.40	17.
		N-Nitrosomethylethylamine	10595–95–6	0.40	2.3.
		N-Nitrosomorpholine	59–89–2	0.40	2.3.
		N-Nitrosopiperidine	100–75–4	0.013	35.
		N-Nitrosopyrrolidine	930–55–2	0.013	35.
		Parathion	56–38–2	0.014	4.6.
		Total PCBs (sum of all PCB isomers, or all Aroclors).	1336–36–3	0.10	10.
		Pentachlorobenzene	608–93–5	0.055	10.
		PeCDDs (All Pentachlorodibenzo-p-dioxins).	NA	0.000063	0.001.
		PeCDFs (All Pentachlorodibenzofurans).	NA	0.000035	0.001.
		Pentachloronitrobenzene	82–68–8	0.055	4.8.
		Pentachlorophenol	87–86–5	0.089	7.4.
		Phenacetin	62–44–2	0.081	16.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Phorate	298–02–2	0.021	4.6.
		Phthalic anhydride	85–44–9	0.055	28.
		Pronamide	23950–58–5	0.093	1.5.
		Pyrene	129–00–0	0.067	8.2.
		Pyridine	110–86–1	0.014	16.
		Safrole	94–59–7	0.081	22.
		Silvex (2,4,5-TP)	93–72–1	0.72	7.9.
		2,4,5-T	93–76–5	0.72	7.9.
		1,2,4,5-Tetrachlorobenzene	95–94–3	0.055	14.
		TCDDs (All Tetrachlorodibenzo-p-dioxins).	NA	0.000063	0.001.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
		TCDFs (All Tetrachlorodibenzofurans).	NA	0.000063	0.001.
		1,1,2,2-Tetrachloroethane	630–20–6	0.057	6.0.
		1,1,2,2-Tetrachloroethane	79–34–6	0.057	6.0.
		Tetrachloroethylene	127–18–4	0.056	6.0.
		2,3,4,6-Tetrachlorophenol	58–90–2	0.030	7.4.
		Toluene	108–88–3	0.080	10.
		Toxaphene	8001–35–2	0.0095	2.6.
		Bromoform (Tribromomethane).	75–25–2	0.63	15.
		1,2,4-Trichlorobenzene	120–82–1	0.055	19.
		1,1,1-Trichloroethane	71–55–6	0.054	6.0.
		1,1,2-Trichloroethane	79–00–5	0.054	6.0.
		Trichloroethylene	79–01–6	0.054	6.0.
		Trichloromonofluoromethane	75–69–4	0.020	30.
		2,4,5-Trichlorophenol	95–95–4	0.18	7.4.
		2,4,6-Trichlorophenol	88–06–2	0.035	7.4.
		1,2,3-Trichloropropane	96–18–4	0.85	30.
		1,1,2-Trichloro-1,2,2-trifluoroethane.	76–13–1	0.057	30.
		tris(2,3-Dibromopropyl) phosphate.	126–72–7	0.11	0.10.
		Vinyl chloride	75–01–4	0.27	6.0.
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations).	1330–20–7	0.32	30.
		Antimony	7440–36–0	1.9	2.1 mg/l TCLP.
		Arsenic	7440–38–2	1.4	5.0 mg/l TCLP.
		Barium	7440–39–3	1.2	7.6 mg/l TCLP.
		Beryllium	7440–41–7	0.82	0.014 mg/l TCLP.
		Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7]	57–12–5	0.86	30.
		Fluoride	16964–48–8	35	48.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Mercury	7439–97–6	0.15	0.025 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Selenium	7782–49–2	0.82	0.16 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.
		Sulfide	8496–25–8	14	NA.
		Thallium	7440–28–0	1.4	0.078 mg/l TCLP.
		Vanadium	7440–62–2	4.3	.023.
*	* *	*	*	*	*
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous).	Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37mg/l TCLP.
	Wastewater treatment sludge from the production of chrome oxide green pigments (hydrated).	Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37mg/l TCLP.
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K018	Heavy ends from the fractionation column in ethyl chloride production..	Chloroethane	75–00–3	0.27	6.0.
		Chloromethane	74–87–3	0.19	30.
		1,1-Dichloroethane	75–34–3	0.059	6.0.
		1,2-Dichloroethane	107–06–2	0.21	6.0.
		Hexachlorobenzene	118–74–1	0.055	10.
		Hexachlorobutadiene	87–68–3	0.055	5.6.
		Hexachloroethane	67–72–1	0.055	30.
		Pentachloroethane	76–01–7	0.055	6.0.
		1,1,1-Trichloroethane	71–55–6	0.054	6.0.
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	bis(2-Chloroethyl)ether	111–44–4	0.033	6.0.
		Chlorobenzene	108–90–7	0.057	6.0.
		Chloroform	67–66–3	0.046	6.0.
		p-Dichlorobenzene	106–46–7	0.090	6.0.
		1,2-Dichloroethane	107–06–2	0.21	6.0.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
		Fluorene	86–73–7	0.059	3.4
		Hexachloroethane	67–72–1	0.055	30.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		1,2,4,5-Tetrachlorobenzene	95–94–3	0.055	14.
		Tetrachlorothylene	127–18–4	0.056	6.0.
		1,2,4-Tetrachlorobenzene	120–82–1	0.055	19.
		1,1,1-Trichloroethane	71–55–6	0.054	6.0
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K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	1,1-Dichloroethane	75–34–3	0.059	6.0.
		trans-1,2-Dichloroethylene	156–60–5	0.054	30.
		Hexachlorobutadiene	87–68–3	0.055	5.6.
		Hexachloroethane	67–72–1	0.055	30.
		Pentachloroethane	76–01–7	0.055	6.0.
		1,1,1,2-Tetrachloroethane	630–20–6	0.057	6.0.
		1,1,2,2-Tetrachloroethane	79–34–6	0.057	6.0.
		Tetrachloroethylene	127–18–4	0.056	6.0.
		1,1,1-Trichloroethane	71–55–6	0.054	6.0.
		1,1,2-Trichloroethane	79–00–5	0.054	6.0.
		Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
*	* *	*	*	*	*
K030	Column bodies or heavy ends from the combined production of trichloroethylene and perchloroethylene.	o-Dichlorobenzene	95–50–1	0.088	6.0.
		p-Dichlorobenzene	106–46–7	0.090	6.0.
		Hexachlorobutadiene	87–68–3	0.055	5.6.
		Hexachloroethane	67–72–1	0.055	30.
		Hexachloropropylene	1888–71–7	0.035	30.
		Pentachlorobenzene	608–93–5	0.055	10.
		Pentachloroethane	76–01–7	0.055	6.0.
		1,2,4,5-Tetrachlorobenzene	95–94–3	0.055	14.
		Tetrachloroethylene	127–18–4	0.056	6.0.
		1,2,4-Trichlorobenzene	120–82–1	0.055	19.
*	* *	*	*	*	*
K035	Wastewater treatment sludges generated in the production of creosote.	Acenaphthene	83–32–9	0.059	3.4.
		Anthracene	120–12–7	0.059	3.4.
		Benz (a) anthracene	56–55–3	0.059	3.4.
		Benzo (a) pyrene	50–32–8	0.061	3.4.
		Chrysene	218–01–9	0.059	3.4.
		o-Cresol	95–48–7	0.11	5.6.
		m-Cresol (difficult to distinguish from p-cresol).	108–39–4	0.77	5.6.
		p-Cresol (difficult to distinguish from m-cresol).	106–44–5	0.77	5.6.
		Dibenz(a,h)- anthracene	53–70–3	0.055	8.2.
		Fluoranthene	206–44–0	0.068	3.4.
		Fluorene	86–73–7	0.068	3.4.
		Indeno(1,2,3-cd)pyrene	193–39–5	0.0055	3.4.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Pyrene	129–00–0	0.067	8.2.
*	* *	*	*	*	*
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	Benzene	71–43–2	0.14	10.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28.
		Chrysene	218–01–9	0.059	3.4.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
		Di-n-butyl phthalate	84–74–2	0.057	28.
		Ethylbenzene	100–41–4	0.057	10.
		Fluorene	86–73–7	0.059	3.4.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Pyrene	129–00–0	0.067	8.2.
		Toluene	108–88–33	0.080	10.
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations).	1330–20–7	0.32	30.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
K049	Slop oil emulsion solids from the petroleum refining industry.	Anthracene	120–12–7	0.059	3.4.
		Benzene	71–43–2	0.14	10.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28.
		Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP.
		Chrysene	2218–01–9	0.059	3.4.
		2,4-Dimethylphenol	105–67–9	0.036	14.
		Ethylbenzene	100–41–4	0.057	10.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Pyrene	129–00–0	0.067	8.2.
		Toluene	108–88–3	0.080	10.
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations).	1330–20–7	0.32	30.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.96	5.0 mg/l TCLP.
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	Benzo(a)pyrene	50–32–8	0.061	3.4
		Phenol	108–95–2	0.039	6.2.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
K051	API separator sludge from the petroleum refining industry.	Acenaphthene	83–32–9	0.059	3.4.
		Anthracene	120–12–7	0.059	3.4.
		Benz(a)anthracene	56–55–3	0.059	3.4.
		Benzene	71–43–2	0.14	10.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28.
		Chrysene	2218–01–9	0.059	3.4.
		Di-n-butyl phthalate	105–67–9	0.057	28.
		Ethylbenzene	100–41–4	0.057	10.
		Fluorene	86–73–7	0.059	3.4.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Pyrene	129–00–0	0.067	8.2.
		Toluene	108–88–3	0.08	10.
		Xylenes-mixed isomers (sum of 0-, m-, and p-xylene concentrations).	1330–20–7	0.32	30.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory[1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS[2] No.	Concentration in mg/l[3]; or technology code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or technology code
K052	Tank bottoms (leaded) from the petroleum refining industry.	Benzene	71–43–2	0.14	10.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		o-Cresol	95–48–7	0.11	5.6.
		m-Cresol (difficult to distinguish from p-cresol).	108–39–4	0.77	5.6.
		p-Cresol (difficult to distinguish from m-cresol).	106–44–5	0.77	5.6.
		2,4-Dimethylphenol	105–67–9	0.036	14.
		Ethylbenzene	100–41–4	0.057	10.
		Naphthalene	91–20–3	0.059	5.6.
		Phenanthrene	85–01–8	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Toluene	108–88–3	0.08	10.
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations).	1330–20–7	0.32	30.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total)[7]	57–12–5	1.2	590.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
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K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	Antimony	7440–36–0	1.9	2.1 mg/l TCLP.
		Arsenic	7440–38–2	1.4	5.0 mg/l TCLP.
		Barium	7440–39–3	1.2	7.6 mg/l TCLP.
		Beryllium	7440–41–7	0.82	0.014 mg/l TCLP.
		Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Mercury	7439–97–6	0.15	0.025 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Selenium	7782–49–2	0.82	0.16 mg/l TCLP.
		Silver	7440–22–4	0.43	0.30 mg/l TCLP.
		Thallium	7440–28–0	1.4	0.078 mg/l TCLP.
		Zinc	7440–66–6	2.61	5.3 mg/l TCLP.
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K083	Distillation bottoms from aniline production.	Aniline	62–53–3	0.81	14.
		Benzene	71–43–2	0.14	10.
		Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP.
		Diphenylamine (difficult to distinguish from diphenylnitrosamine).	122–39–4	0.92	13.
		Diphenylnitrosamine (difficult to distinguish from diphenylamine).	86–30–6	0.92	13.
		Nitrobenzene	98–95–3	0.068	14.
		Phenol	108–95–2	0.039	6.2.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
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K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	Acetone	67–64–1	0.28	160.
		Acetophenone	96–86–2	0.010	9.7.
		bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28.
		n-Butyl alcohol	71–36–3	5.6	2.6.
		Butylbenzyl phthalate	85–68–7	0.017	28.
		Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP.
		o-Dichlorobenzene	95–50–1	0.088	.6.0
		Diethyl phthalate	84–66–2	0.20	28.
		Dimethyl phthalate	131–11–3	0.047	28.
		Di-n-butyl phthalate	84–74–2	0.057	28.
		Di-n-octyl phthalate	117–84–0	0.017	28.
		Ethyl acetate	141–78–6	0.34	33.
		Ethylbenzene	100–41–4	0.057	10.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
		Methanol	67–56–1	5.6	0.75 mg/l TCLP.
		Methyl ethyl ketone	78–93–3	0.28	36.
		Methyl isobutyl ketone	108–10–1	0.14	33.
		Methylene chloride	75–09–2	0.089	30.
		Naphthalene	91–20–3	0.059	5.6.
		Nitrobenzene	98–95–3	0.068	14.
		Toluene	108–88–3	0.080	10.
		1,1,1-Trichloroethane	71–55–6	0.054	6.0.
		Trichloroethylene	79–01–6	0.054	6.0.
		Xylenes-mixed isomers (sun of o-, m-, and p-xylene concentrations).	1330–20–7	0.32	30.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
*	* *	*	*	*	*
K088	Spent potliners from primary aluminum reduction.	Acenaphthene	83–32–9	0.059	3.4.
		Anthracene	120–12–7	0.059	3.4.
		Benz(a)anthracene	56–55–3	0.059	3.4.
		Benzo(a)pyrene	50–32–8	0.061	3.4.
		Benzo(b)fluoranthene	205–99–2	0.11	6.8.
		Benzo(k)fluoranthene	207–08–9	0.11	6.8.
		Benzo(g,h,i)perylene	191–24–2	0.0055	1.8.
		Chrysene	218–01–9	0.059	3.4.
		Dibenz(a,h)anthracene	53–70–3	0.055	8.2.
		Fluoranthene	206–44–0	0.068	3.4.
		Indeno(1,2,3,-c,d)pyrene	193–39–5	0.0055	3.4.
		Phenanthrene	85–01–8	0.059	5.6.
		Pyrene	129–00–0	0.067	8.2.
		Antimony	7440–36–0	1.9	2.1.
		Arsenic	7440–38–2	1.4	5.0.
		Barium	7440–39–3	1.2	7.6.
		Beryllium	7440–41–7	0.82	0.014.
		Cadmium	7440–43–9	0.69	0.19.
		Chromium (Total)	7440–47–3	2.77	0.86.
		Lead	7439–92–1	0.69	0.37.
		Mercury	7439–97–6	0.15	0.025.
		Nickel	7440–02–0	3.98	5.0.
		Selenium	7782–49–2	0.82	0.16.
		Silver	7440–22–4	0.43	0.30.
		Cyanide (Total)	57–12–5	1.2	590.
		Cyanide (Amenable)	57–12–5	0.86	30.
		Fluoride	16964–48–8	35	48.
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K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	o-Nitroaniline	88–74–4	0.27	14.
		Arsenic	7440–38—2	1.4	5.0 mg/l TCLP.
		Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Mercury	7439–97–6	0.15	0.025 mg/l TCLP.
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	o-Nitrophenol	88–75–5	0.028	13.
		Arsenic	7440–38–2	1.4	5.0 mg/l TCLP.
		Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Mercury	7439–97–6	0.15	0.025 mg/l TCLP.
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K–140	Waste solids and filter cartridges from the production of 2,4,6-tribromophenol.	2,4,6-Tribromophenol	118–79–6	0.035	7.4
		Tolurene	108–88–3	0.080	10.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
*	* *	*	*	*	*
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.	Acetonitrile	75–05–8	5.6	1.8.
		Acetophenone	96–86–2	0.010	9.7.
		Aniline	62–53–3	0.81	14.
		Benomyl	17804–35–2	0.056	1.4.
		Benzene	71–43–2	0.14	10.
		Carbaryl	63–25–2	0.006	0.14.
		Carbenzadim	10605–21–7	0.056	1.4.
		Carbofuran	1563–66–2	0.006	0.14.
		Carbosulfan	55285–14–8	0.028	1.4.
		Chlorobenzene	108–90–7	0.057	6.0.
		Chloroform	67–66–3	0.046	6.0.
		o-Dichlorobenzene	95–50–1	0.088	6.0.
		Methomyl	16752–77–5	0.028	0.14.
		Methylene chloride	75–09–2	0.089	30.
		Methyl ethyl ketone	78–93–3	0.28	36.
		Naphthalene	91–20–3	0.059	5.6.
		Phenol	108–95–2	0.039	6.2.
		Pyridine	110–86–1	0.014	16.
		Toluene	108–88–3	0.080	10.
		Triethylamine	121–44–8	0.081	1.5.
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoly oximes.	Carbon tetrachloride	56–23–5	0.057	6.0.
		Chloroform	67–66–3	0.046	6.0.
		Chloromethane	74–87–3	0.19	30.
		Methomyl	16752–77–5	0.028	0.14.
		Methylene chloride	75–09–2	0.089	30.
		Methyl ethyl ketone	78–93–3	0.28	36.
		o-Phenylenediamine	95–54–5	0.056	5.6.
		Pyridine	110–86–1	0.014	16.
		Triethylamine	121–44–8	0.081	1.5.
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoly oximes.	Benomyl	17804–35–2	0.056	1.4.
		Benzene	71–43–2	0.14	10.
		Carbenzadim	10605–21–7	0.056	1.4.
		Carbofuran	1563–66–2	0.006	0.14.
		Carbosulfan	55285–14–8	0.028	1.4.
		Chloroform	67–66–3	0.046	6.0.
		Methylene chloride	75–09–2	0.089	30.
		Phenol	108–95–2	0.039	6.2.
K159	Organics from the treatment of thiocarbamate wastes.	Benzene	71–43–2	0.14	10.
		Butylate	2008–41–5	0.003	1.5.
		EPTC (Eptam)	759–94–4	0.003	1.4.
		Molinate	2212–67–1	0.003	1.4.
		Pebulate	1114–71–2	0.003	1.4.
		Vemolate	1929–77–7	0.003	1.4.
K160	Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarabamates and solids from the treatment of thiocarbamate wastes.	Butylate	2008–41–5	0.003	1.5.
		EPTC (Eptam)	759–94–4	0.003	1.4.
		Molinate	2212–67–1	0.003	1.4.
		Pebulate	t1114–71–2	0.003	1.4.
		Toluene	108–88–3	0.080	10.
		Vemolate	1929–77–7	0.003	1.4.
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts.	Antimony	7440–36–0	1.9	2.1 mg/l TCLP.
		Arsenic	7440–38–2	1.4	5.0 mg/l TCLP.
		Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP.
		Dithiocarbamates (total).	137–30–4	0.028	28.
		Lead	7439–92–1	0.69	0.37 mg/l TCLP.
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP.
		Selenium	7782–49–2	0.82	0.16 mg/l TCLP.
*	* *	*	*	*	*
P003	Acrolein	Acrolein	107–02–8	0.29	2.8.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
*	* *	*	*	*	*
P013	Barium cyanide	Barium	7440–39–3	1.2	7.6 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7]	57–12–5	0.86	30.
*	* *	*	*	*	*
P056	Fluorine	Fluoride (measured in wastewaters only).	16964–48–8	35	48.
*	* *	*	*	*	*
P127	Carbofuran	Carbofuran	1563–66–2	0.006	0.14.
P128	Mexacarbate	Mexacarbate	315–18–4	0.056	1.4.
P185	Tirpate	Tirpate	26419–73–8	0.056	0.28.
P188	Physostigmine salicylate	Physostigmine salicylate	57–64–7	0.056	1.4.
P189	Carbosulfan	Carbosulfan	55285–14–8	0.028	1.4.
P190	Metolcarb	Metolcarb	1129–41–5	0.056	1.4.
P191	Dimetilan	Dimetilan	644–64–4	0.056	1.4.
P192	Isolan	Isolan	119–38–0	0.056	1.4.
P194	Oxamyl	Oxamyl	23135–22–0	0.056	0.28.
P196	Manganese dimethyldithiocarbamate	Dithiocarbamates (total)	137–30–4	0.028	28.
P197	Formparanate	Formparanate	17702–57–7	0.056	1.4.
P198	Formetanate hydrochloride	Formetanate hydrochloride	23422–53–9	0.056	1.4.
P199	Methiocarb	Methiocarb	2032–65–7	0.056	1.4.
P201	Promecarb	Promecarb	2631–37–0	0.056	1.4.
P202	m-Cumenyl methylcarbamate	m-Cumenyl methylcarbamate.	64–00–6	0.056	1.4.
P203	Aldicarb sulfone	Aldicarb sulfone	1646–88–4	0.056	0.28.
P204	Physostigmine	Physostigmine	57–47–6	0.056	1.4.
P205	Ziram	Dithiocarbamates (total)	137–30–4	0.028	28.
*	* *	*	*	*	*
U038	Chlorobenzilate	Chlorobenzilate	510–15–6	0.10	6.6.
*	* *	*	*	*	*
U042	2-Chloroethyl vinyl ether	2-Chloroethyl vinyl ether	110–75–8	0.062	5.6.
U093	p-Dimethylaminoazobenzene	p-Dimethylaminoazobenzene.	60–11–7	0.13	29.
*	* *	*	*	*	*
U134	Hydrogen fluoride	Fluoride (measured in wastewaters only).	16964–48–8	35	48.
*	* *	*	*	*	*
U168	2-Naphthylamine	2-Naphthylamine	91–59–8	0.52	15.
*	* *	*	*	*	*
U271	Benomyl	Benomyl	17804–35–2	0.056	1.4.
U277	Sulfallate	Dithiocarbamates (total)	137–30–4	0.028	28.
U278	Bendiocarb	Bendiocarb	22781–23–3	0.056	1.4.
U279	Carbaryl	Carbaryl	63–25–2	0.006	0.14.
U280	Barban	Barban	101–27–9	0.056	1.4.
*	* *	*	*	*	*
U364	Bendiocarb phenol	Bendiocarb phenol	22961–82–6	0.056	1.4.
U365	Molinate	Molinate	2212–67–1	0.003	1.4.
U366	Dazomet	Dithiocarbamates (total)	137–30–4	0.028	28.
U367	Carbofuran phenol	Carbofuran phenol	1563–38–8	0.056	1.4.
U372	Carbendazim	Carbendazim	10605–21–7	0.056	1.4.
U373	Propham	Propham	122–42–9	0.056	1.4.
U375	3-Iodo-2-propynyl n-butylcarbamate	3-Iodo-2-propynyl n-butylcarbamate.	55406–53–6	0.056	1.4.
U376	Selenium, tetrakis (dimethyldithiocarbamate).	Dithiocarbamates (total)	137–30–4	0.028	28.
	Selenium	Selenium	7782–49–2	0.82	0.16 mg/l TCLP.
U377	Potassium n-methyldithiocarbamate	Dithiocarbamates (total)	137–30–4	0.028	28.
U378	Potassium n-hydroxymethyl-n-methyldithiocarbamate.	Dithiocarbamates (total)	137–30–4	0.028	28.
U379	Sodium dibutyldithiocarbamate	Dithiocarbamates (total)	137–30–4	0.028	28.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
U381	Sodium diethyldithiocarbamate	Dithiocarbamates (total)	137–30–4	0.028	28.
U382	Sodium dimethyldithiocarbamate	Dithiocarbamates (total)	137–30–4	0.028	28.
U383	Potassium dimethyl dithiocarbamate	Dithiocarbamates (total)	137–30–4	0.028	28.
U384	Metam Sodium	Dithiocarbamates (total)	137–30–4	0.028	28.
U385	Vemolate	Vemolate	1929–77–7	0.003	1.4.
U386	Cycloate	Cycloate	1134–23–2	0.003	1.4.
U387	Prosulfocarb	Prosulfocarb	52888–80–9	0.003	1.4.
U389	Triallate	Triallate	2303–17–5	0.003	1.4.
U390	EPTC	EPTC	759–94–4	0.003	1.4.
U391	Pebulate	Pebulate	1114–71–2	0.003	1.4.
U392	Butylate	Butylate	2008–41–5	0.003	1.4.
U393	Copper dimethyldithiocarbamate	Dithiocarbamates (total)	137–30–4	0.028	28.
U394	A2213	A2213	30558–43–1	0.003	1.4.
U395	Diethylene glycol, dicarbamate	Diethylene glycol, dicarbamate.	5952–26–1	0.056	1.4.
U396	Ferbam	Dithiocarbamates (total)	137–30–4	0.028	28.
U400	Bis(pentamethylene)thiuram tetrasulfide.	Dithiocarbamates (total)	137–30–4	0.028	28.
U401	Tetramethyl thiuram monosulfide	Dithiocarbamates (total)	137–30–4	0.028	28.
U402	Tetrabutylthiuram disulfide	Dithiocarbamates (total)	137–30–4	0.028	28.
U403	Disulfiram	Dithiocarbamates (total)	137–30–4	0.028	28.
U404	Triethylamine	Triethylamine	101–44–8	0.081	1.5.
U407	Ethyl Ziram	Dithiocarbamates (total)	137–30–4	0.028	28.
U408	2,4,6-Tribromophenol	2,4,6-Tribromophenol	118–79–6	0.035	7.4.
U409	Thiophanate-methyl	Thiophanate-methyl	23564–05–8	0.056	1.4.
U410	Thiodicarb	Thiodicarb	59669–26–0	0.019	1.4.
U411	Propoxur	Propoxur	114–26–1	0.056	1.4.

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of treatment/regulatory subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42, Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[6] Where an alternate treatment standard or set of alternate standards has been indicated, a facility may comply with this alternate standard, but only for the Treatment/Regulatory Subcategory or physical form (i.e., wastewater and/or nonwastewater) specified for that alternate standard.

[7] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of 1 hour and 15 minutes.

Note: NA means not applicable.

19. Section 268.44 is amended by revising paragraph (a) to read as follows:

§ 268.44 Variance from a treatment standard.

(a) Where the treatment standard is expressed as a concentration in a waste or waste extract and a waste cannot be treated to the specified level, or where the treatment technology is not appropriate to the waste, the generator or treatment facility may petition the Administrator for a variance from the treatment standard. The petitioner must demonstrate that because the physical or chemical properties of the waste differs significantly from wastes analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods. The petitioner may also demonstrate that it is treating underlying hazardous constituents in characteristically hazardous wastewaters by sending the waste to a properly designed and operated BAT/PSES system, which may not be achieving the treatment standards found in § 268.48.

* * * * *

20. In subpart D, § 268.48, the table in paragraph (a) is revised to read as follows:

(a) * * *

§ 268.48 Universal Treatment Standards.

§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS

Regulated constituent/common name	CAS [1] No.	Wastewater standard	Nonwastewater standard
		Concentration in mg/l [2]	Concentration in mg/kg [3] unless noted as "mg/l TCLP"
A2213	30558–43–1	0.003	1.4
Acenaphthylene	208–96–8	0.059	3.4
Acenaphthene	83–32–9	0.059	3.4
Acetone	67–64–1	0.28	160
Acetonitrile	75–05–8	5.6	1.8
Acetophenone	96–86–2	0.010	9.7
2-Acetylaminofluorene	53–96–3	0.059	140
Acrolein	107–02–8	0.29	NA
Acrylamide	79–06–1	19	23
Acrylonitrile	107–13–1	0.24	84
Aldicarb sulfone	1646–88–4	0.056	0.28
Aldrin	309–00–2	0.021	0.066
4-Aminobiphenyl	92–67–1	0.13	NA
Aniline	62–53–3	0.81	14
Anthracene	120–12–7	0.059	3.4
Aramite	140–57–8	0.36	NA
alpha-BHC	319–84–6	0.00014	0.066
beta-BHC	319–85–7	0.00014	0.066
delta-BHC	319–86–8	0.023	0.066
gamma-BHC	58–89–9	0.0017	0.066
Barban	101–27–9	0.056	1.4
Bendiocarb	22781–23–3	0.056	1.4
Bendiocarb phenol	22961–82–6	0.056	1.4
Benomyl	17804–35–2	0.056	1.4
Benzene	71–43–2	0.14	10
Benz(a)thracene	56–55–3	0.059	3.4
Benzal choride	98–87–3	0.055	6.0
Benzo(b)florathene (difficult to distingush from benzo(k)fluoranthene)	205–99–2	0.11	6.8
Benzo(k)fluorathene (difficult to distinguish from benzo(b)fluoranthene	207–08–9	0.11	6.8
Benzo(g,h,i)perylene	191–24–2	0.0055	1.8
Benzo(a)pyrene	50–32–8	0.061	3.4
Bromodichloromethane	75–27–4	0.35	15
Bromomethane/Methyl bromide	74–83–9	0.11	15
4–Bromophenyl phenyl ether	101–55–3	0.055	15
n-Butyl alcohol	71–36–3	5.6	2.6
Butylate	2008–41–5	0.003	1.4
Butyle benzyl phthalate	85–68–7	0.017	28
2-sec-Butyl-4,6-dinitrophenol/Dinoseb	88–85–7	0.066	2.5
Carbaryl	63–25–2	0.006	0.14
Carbenzadim	10605–21–7	0.056	1.4
Carbofuran	1563–66–2	0.006	0.14
Carbofuran phenol	1563–38–8	0.056	1.4
Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP
Carbon tetrachloride	56–23–5	0.057	6.0
Carbosulfan	55285–14–8	0.028	1.4
Chlordane (alpha and gamma isomers)	57–74–9	0.0033	0.26
p-Chloroaniline	106–47–8	0.46	16
Chlorobenzene	108–90–7	0.057	6.0
Chlorobenzilate	510–15–6	0.10	NA
2-Chloro-1,3-butadiene	126–99–8	0.057	0.28
Chlorodibromomethane	124–48–1	0.057	15
Choroethane	75–00–3	0.27	6.0
bis(2-Chloroethoxy)methane	111–91–1	0.036	7.2
bis(2-Chloroethyl)ether	111–44–4	0.033	6.0
Chloroform	67–66–3	0.046	6.0
bis(2-Chloroisopropyl)ether	39638–32–9	0.055	7.2
p-Chloro-m-cresol	59–50–7	0.018	14
2-Chloroethyl vinyl ether	110–75–8	0.062	NA
Chloromethane/Methyl chloride	74–87–3	0.19	30
2-Chloronaphthalene	91–58–7	0.055	5.6
2-Chlorophenol	95–57–8	0.044	5.7
3-Chloropropylene	107–05–1	0.036	30
Chrysene	218–01–9	0.059	3.4
o-Cresol	95–48–7	0.11	5.6
m-Cresol (difficult to distinguish from p-cresol)	108–39–4	0.77	5.6
p-Cresol (difficult to distinguish from m-cresol)	106–44–5	0.77	5.6
m-Cumenyl methylcarbamate	64–00–6	0.056	1.4

§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS—Continued

Regulated constituent/common name	CAS [1] No.	Wastewater standard	Nonwastewater standard
		Concentration in mg/l [2]	Concentration in mg/kg [3] unless noted as "mg/l TCLP"
Cycloate	1134–23–2	0.003	1.4
Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP
o,p'-DDD	53–19–0	0.023	0.087
p,p'-DDD	72–54–8	0.023	0.087
o,p'-DDE	3424–82–6	0.031	0.087
p,p'-DDE	72–55–9	0.031	0.087
o,p'-DDT	789–02–6	0.0039	0.087
p,p'-DDT	50–29–3	0.0039	0.087
Dibenz(a,h)anthracene	53–70–3	0.055	8.2
Dibenz(a,e)pyrene	192–65–4	0.061	NA
1,2-Dibromo-3-chloropropane	96–12–8	0.11	15
1,2-Dibromoethane/Ethylene dibromide	106–93–4	0.028	15
Dibromomethane	74–95–3	0.11	15
m-Dichlorobenzene	541–73–1	0.036	6.0
o-Dichlorobenzene	95–50–1	0.088	6.0
p-Dichlorobenzene	106–46–7	0.090	6.0
Dichlorodifluoromethane	75–71–8	0.23	7.2
1,1-Dichloroethane	75–34–3	0.059	6.0
1,2-Dichloroethane	107–06–2	0.21	6.0
1,1-Dichloroethylene	75–35–4	0.025	6.0
trans-1,2-Dichloroethylene	156–60–5	0.054	30
2,4-Dichlorophenol	120–83–2	0.044	14
2,6-Dichlorophenol	87–65–0	0.044	14
2,4-Dichlorophenoxyacetic acid/2,4-D	94–75–7	0.72	10
1,2-Dichloropropane	78–87–5	0.85	18
cis-1,3-Dichloropropylene	10061–01–5	0.036	18
trans-1,3-Dichloropropylene	10061–02–6	0.036	18
Dieldrin	60–57–1	0.017	0.13
Diethylene glycol, dicarbamate	5952–26–1	0.056	1.4
Diethyl phthalate	84–66–2	0.20	28
p-Dimethylaminoazobenzene	60–11–7	0.13	NA
2-4-Dimethyl phenol	105–67–9	0.036	14
Dimethyl phthalate	131–11–3	0.047	28
Dimetilan	644–64–4	0.056	1.4
Di-n-butyl phthalate	84–74–2	0.057	28
1,4-Dinitrobenzene	100–25–4	0.32	2.3
4,6-Dinitro-o-cresol	534–52–1	0.28	160
2,4-Dinitrophenol	51–28–5	0.12	160
2,4-Dinitrotoluene	121–14–2	0.32	140
2,6-Dinitrotoluene	606–20–2	0.55	28
Di-n-octyl phthalate	117–84–0	0.017	28
Di-n-propylnitrosamine	621–64–7	0.40	14
1,4-Dioxane	123–91–1	0.22	170
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122–39–4	0.92	13
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86–30–6	0.92	13
1,2-Dephenylhydrazine	122–66–7	0.087	NA
Disulfoton	298–04–4	0.017	6.2
Dithiocarbamates (total)	137–30–4	0.028	28
Endosulfan I	939–98–8	0.023	0.066
Endosulfan II	33213–6–5	0.029	0.13
Endosulfan sulfate	1–31–07–8	0.029	0.13
Endrin	72–20–8	0.0028	0.13
Endrin aldehyde	7421–93–4	0.025	0.13
EPTC	759–94–4	0.003	1.4
Ethyl acetate	141–78–6	0.34	33
Ethyl benzene	100–41–4	0.057	10
Ethyl cyanide/Propanenitrile	107–12–0	0.24	360
Ethyl ether	60–29–7	0.12	160
bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28
Ethyl methacrylate	97–63–2	0.14	160
Ethylene oxide	75–21–8	0.12	NA
Famphur	52–85–7	0.017	15
Fluoranthene	206–44–0	0.068	3.4
Fluorene	86–73–7	0.059	3.4
Formetanate hydrochloride	23422–53–9	0.056	1.4
Formparanate	17702–57–7	0.056	1.4
Heptachlor	76–44–8	0.0012	0.066

§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS—Continued

Regulated constituent/common name	CAS [1] No.	Wastewater standard	Nonwastewater standard
		Concentration in mg/l [2]	Concentration in mg/kg [3] unless noted as "mg/l TCLP"
Heptachlor epoxide	1024–57–3	0.016	0.066
Hexachlorobenzene	118–74–1	0.055	10
Hexachlorobutadiene	87–68–3	0.055	5.6
Hexachlorocyclopentadiene	77–47–4	0.057	2.4
HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.00063	0.001
HxCDFs (All Hexachlorodibenzofurans)	NA	0.00063	0.001
Hexachloroethane	67–72–1	0.055	30
Hexachloropropylene	1888–71–7	0.035	30
Indeno (1,2,3-c,d) pyrene	193–39–5	0.0055	3.4
Iodomethane	74–88–4	0.19	65
3-Iodo-2-propynyl n-butylcarbamate	55406–53–6	0.056	1.4
Isobutyl alcohol	78–83–1	5.6	170
Isodrin	456–73–6	0.021	0.066
Isolan	119–38–0	0.056	1.4
Isosafrole	120–58–1	0.081	2.6
Kepone	143–50–8	0.0011	0.13
Methacrylonitrile	126–98–7	0.24	84
Methanol	67–56–1	5.6	0.75 mg/l TCLP
Methapyrilene	91–80–5	0.081	1.5
Methiocarb	2032–65–7	0.056	1.4
Methomyl	16752–77–5	0.028	0.14
Methoxychlor	72–43–5	0.25	0.18
3-Methylcholanthrene	56–49–5	0.0055	15
4,4-Methylene bis(2-chloroaniline)	101–14–4	0.50	30
Methylene chloride	75–09–2	0.089	30
Methyl ethyl ketone	78–93–3	0.28	36
Methyl isobutyl ketone	108–10–1	0.14	33
Methyl methacrylate	80–62–6	0.14	160
Methyl methansulfonate	66–27–3	0.018	NA
Methyl parathion	298–00–0	0.014	4.6
Metolcarb	1129–41–5	0.056	1.4
Mexacarbate	315–18–4	0.056	1.4
Molinate	2212–67–1	0.003	1.4
Naphthalene	91–20–3	0.059	5.6
2-Naphthylamine	91–59–8	0.52	NA
o-Nitroaniline	88–74–4	0.27	14
p-Nitroaniline	100–01–6	0.028	28
Nitrobenzene	98–95–3	0.068	14
5-Nitro-o-toluidine	99–55–8	0.32	28
o-Nitrophenol	88–75–5	0.028	13
p-Nitrophenol	100–02–7	0.12	29
N-Nitrosodiethylamine	55–18–5	0.40	28
N-Nitrosodimethylamine	62–75–9	0.40	2.3
N-Nitroso-di-n-butylamine	924–16–3	0.40	17
N-Nitrosomethylethylamine	10595–95–6	0.40	2.3
N-Nitrosomorpholine	59–89–2	0.40	2.3
N-Nitrosopiperidine	100–75–4	0.013	35
N-Nitrosophyrrolidine	930–55–2	0.013	35
Oxamyl	23135–22–0	0.056	0.28
Parathion	56–38–2	0.014	4.6
Total PCBs (sum of all PCB isomers, or all Aroclors)	1336–36–3	0.10	10
Pebulate	1114–71–2	0.003	1.4
Pentachlorobenzene	608–93–5	0.055	10
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
PeCDFs (All Pentachlorodibenyofurans)	NA	0.000035	0.001
Pentachloroethane	76–01–7	0.055	6.0
Pentachloronitrobenzene	82–68–8	0.055	4.8
Pentachlorophenol	87–86–5	0.089	7.4
Phenacetin	62–44–2	0.081	16
Phenanthrene	85–01–8	0.059	5.6
Phenol	108–95–2	0.039	6.2
o-Phenylenediamine	95–54–5	0.056	5.6
Phorate	298–02–2	0.021	4.6
Phthalic acid	100–21–0	0.055	28
Phthalic anhydribe	85–44–9	0.055	28
Physostigmine	57–47–6	0.056	1.4
Physostigmine salicylate	57–64–7	0.056	1.4

§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS—Continued

Regulated constituent/common name	CAS [1] No.	Wastewater standard	Nonwastewater standard
		Concentration in mg/l [2]	Concentration in mg/kg [3] unless noted as "mg/l TCLP"
Promecarb	2631–37–0	0.056	1.4
Pronamide	23950–58–5	0.093	1.5
Propham	122–42–9	0.056	1.4
Propoxur	114–26–1	0.056	1.4
Prosulfocarb	52888–80–9	0.003	1.4
Pyrene	129–00–0	0.067	8.2
Pyridine	110–86–1	0.014	16
Safrole	94–59–7	0.081	22
Silvex/2,4,5-TP	93–72–1	0.72	7.9
1,2,4,-5-Tetrachlorobenzene	95–94–3	0.055	14
TCDDs (All Tetrachlorobidenzo-p-dioxins)	NA	0.000063	0.001
TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
1,1,1,2-Tetrachloroethane	630–20–6	0.057	6.0
1,1,2,2-Tetrachloroethane	79–34–6	0.057	6.0
Tetrachloroethylene	127–18–4	0.056	6.0
2,3,4,6-Tetrachlorophenol	58–90–2	0.030	7.4
Thiodicarb	59669–26–0	0.019	1.4
Thiophanate-methyl	23564–05–8	0.056	1.4
Tirpate	26419–73–8	0.056	0.28
Toluene	108–88–3	0.080	10
Toxaphene	8001–35–2	0.0095	2.6
Triallate	2303–17–5	0.003	1.4
Tribromomethane/Bromoform	75–25–2	0.63	15
2,4,6-Tribromophenol	118–79–6	0.035	7.4
1,2,4-Trichlorobenzene	120–82–1	0.055	19
1,1,1-Trichloroethane	71–55–6	0.054	6.0
1,1,2-Trichloroethane	79–00–5	0.054	6.0
Trichloroethylene	79–01–6	0.054	6.0
Trichloromonofluoromethane	75–69–4	0.020	30
2,4,5-Trichlorophenol	95–95–4	0.18	7.4
2,4,6-Tricholorphenol	88–06–2	0.035	7.4
2,4,5-Trichlorophenoxyacetic acid/2,4,5-T	93–76–5	0.72	7.9
1,2,3-Trichloropropane	96–18–4	0.85	30
1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1	0.057	30
Triethylamine	101–44–8	0.081	1.5
tris-(2,3-Dibromopropyl) phosphate	126–72–7	0.11	0.10
Vemolate	1929–77–7	0.003	1.4
Vinyl chloride	75–01–4	0.27	6.0
Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330–20–7	0.32	30
Antimony	7440–36–0	1.9	2.1 mg/l TCLP
Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
Barium	7440–39–3	1.2	7.6 mg/l TCLP
Beryllium	7440–41–7	0.82	0.014 mg/l TCLP
Cadmium	7440–43–9	0.69	0.19 mg/l TCLP
Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP
Cyanides (Total) [4]	57–12–5	1.2	590
Cyanides (Amenable) [4]	57–12–5	0.86	30
Fluoride [5]	16964–48–8	35	NA
Lead	7439–92–1	0.69	0.37 mg/l TCLP
Mercury-Nonwastewater from Retort	7439–97–6	NA	0.20 mg/l TCLP
Mercury-All Others	7439–97–6	0.15	0.025 mg/l TCLP
Nickel	7440–02–0	3.98	5.0 mg/l TCLP
Selenium	7782–49–2	0.82	0.16 mg/l TCLP
Silver	7440–22–4	0.43	0.30 mg/l TCLP
Sulfide	8496–25–8	14	NA
Thallium	7440–28–0	1.4	0.078 mg/l TCLP
Vanadium [5]	7440–62–2	4.3	0.23 mg/l TCLP
Zinc [5]	7440–66–6	2.61	5.3 mg/l TCLP

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with it's salts and/or esters, the CAS number is given for the parent compound only.

[2] Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.

[3] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[4] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'', EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

[5] These constituents are not ''underlying hazardous constituents'' in characteristic wastes, according to the definition at § 268.2(i).

NOTE: NA means not applicable.

21. Appendix XI is added to part 268 to read as follows:

APPENDIX XI TO PART 268.—METAL BEARING WASTES PROHIBITED FROM DILUTION IN A COMBUSTION UNIT ACCORDING TO 40 CFR 268.3(b) [1]

Waste code	Waste description
D004	Toxicity Characteristic for Arsenic.
D005	Toxicity Characteristic for Barium.
D006	Toxicity Characteristic for Cadmium.
D007	Toxicity Characteristic for Chromium.
D008	Toxicity Characteristic for Lead.
D009	Toxicity Characteristic for Mercury.
D010	Toxicity Characteristic for Selenium
D011	Toxicity Characteristic for Silver.
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.
F007	Spent cyanide plating bath solutions from electroplating operations.
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.
F010	Quenching bath residues from oil baths from metal treating operations where cyanides are used in the process.
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.
F012	Quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process.
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum car washing when such phosphating is an exclusive conversion coating process.
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.
K003	Wastewater treatment sludge from the production of molybdate orange pigments.
K004	Wastewater treatment sludge from the production of zinc yellow pigments.
K005	Wastewater treatment sludge from the production of chrome green pigments.
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).
K007	Wastewater treatment sludge from the production of iron blue pigments.
K008	Oven residue from the production of chrome oxide green pigments.
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.
K069	Emission control dust/sludge from secondary lead smelting.
K071	Brine purification muds from the mercury cell processes in chlorine production, where separately prepurified brine is not used.
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.
K106	Sludges from the mercury cell processes for making chlorine.
P010	Arsenic acid H_3AsO_4.
P011	Arsenic oxide As_2O_5.
P012	Arsenic trioxide.
P013	Barium cyanide.
P015	Beryllium.
P029	Copper cyanide Cu(CN).
P074	Nickel cyanide $Ni(CN)_2$.
P087	Osmium tetroxide.
P099	Potassium silver cyanide.
P104	Silver cyanide.
P113	Thallic oxide.
P114	Thallium (I) selenite.
P115	Thallium (I) sulfate.
P119	Ammonium vanadate.
P120	Vanadium oxide V_2O_5.
P121	Zinc cyanide.
U032	Calcium chromate.
U145	Lead phosphate.
U151	Mercury.
U204	Selenious acid.
U205	Selenium disulfide.
U216	Thallium (I) chloride.
U217	Thallium (I) nitrate.

[1] A combustion unit is defined as any thermal technology subject to 40 CFR part 264, subpart O; part 265, subpart O; and/or part 266, subpart

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

22. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

23. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**, and by adding the following entries to Table 2 in chronological order by effective date in the **Federal Register**:

§ 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
* *	* *	*	* *
[*Insert date of publication of final rule in the Federal Register (FR)*].	Land Disposal Restrictions Phase III—Decharacterized Waste- waters, Carbamate and Organobromine Wastes, and Spent Aluminum Potliners in § 268.39.	[*Insert FR page numbers of final rule*].	[*Insert date of 90 days from date of publication of final rule*].

* * * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	FEDERAL REGISTER reference
* *	* *	*	* *
[Insert date 90 days from date of publication of final rule].	Prohibition on land disposal of newly listed and identified wastes..	3004(g)(4) (C) and 3004(m).	[Insert date of publication of final rule] FR [Insert FR page numbers].
[Insert date 2 years from date of publication of final rule].	Prohibition on land disposal of radioactive waste mixed with the newly listed or identified wastes, including soil and debris.		
			Ditto.
		3004(g)(4) (C) and 3004 (m).	Ditto.

* * * * *

[FR Doc. 95–4746 Filed 3–1–95; 8:45 am]

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federal register

Thursday
March 2, 1995

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Pacific Coast Population of the Western Snowy Plover; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD10

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Pacific Coast Population of the Western Snowy Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to designate 28 areas along the coast of California, Oregon, and Washington as critical habitat for the Pacific coast vertebrate population segment of the western snowy plover (*Charadrius alexandrinus nivosus*). This small shorebird is listed as a threatened species under the Endangered Species Act of 1973, as amended (Act). Critical habitat designation would provide additional protection under section 7 of the Act with regard to activities that require Federal agency action. As required by section 4 of the Act, the Service will consider economic and other relevant impacts prior to making a final decision on the size and configuration of critical habitat.

DATES: Comments from all interested parties must be received by May 31, 1995. Public hearing requests must be received by April 17, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to Joel Medlin, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1803, Sacramento, CA 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Karen J. Miller, Sacramento Field Office (see **ADDRESSES** section) telephone 916/979–2725, facsimile 916/979–2723.

SUPPLEMENTARY INFORMATION:

Background

Previous Federal Actions

On March 24, 1988, the Service received a petition from Dr. J.P. Myers of the National Audubon Society to list the Pacific coast population of the western snowy plover as a threatened species under the Act. On November 14, 1988, the Service published a 90-day petition finding (53 FR 45788) that substantial information had been presented indicating the requested action may be warranted. At that time, the Service acknowledged that questions pertaining to the demarcation of the subspecies and significance of interchange between coastal and interior stocks of the subspecies remained to be answered. Public comments were requested on the status of the coastal population of the western snowy plover. A status review of the entire subspecies had been in progress since the Service's December 30, 1982, Vertebrate Notice of Review (47 FR 58454). In that notice, as in subsequent notices of review (September 18, 1985 (50 FR 37958); January 6, 1989 (54 FR 554)), the western snowy plover was included as a category 2 candidate. Category 2 encompasses species for which information now in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. The public comment period on the petition was closed on July 11, 1989 (54 FR 26811, June 26, 1989).

In September 1989, the Service completed a status report on the western snowy plover. Based on the best scientific and commercial data available, including comments submitted during the status review, the Service made a 12-month petition finding on June 25, 1990, that the petitioned action was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act.

On January 14, 1992 (57 FR 1443), the Service published a proposal to list the coastal population of the western snowy plover as a threatened species. After a review of the best scientific and commercial available and all comments received in response to the proposed rule, the Service published a final rule to list the coastal population of the western snowy plover as a threatened species on March 5, 1993 (58 FR 12864), and thereby activated the protections applicable to listed species. The Service did not propose to designate critical habitat for the snowy plover within the proposed or final listing rulemaking because the Service found that critical habitat was not then determinable. The Service now has the information needed for a critical habitat proposal.

Ecological Considerations

The western snowy plover, which is one of twelve subspecies of the snowy plover (Rittinghaus 1961 in Jacobs 1986), is a small, pale colored shorebird with dark patches on either side of the upper breast. The species was first described in 1758 by Linnaeus (American Ornithologists' Union 1957). For a complete discussion of the ecology and life history of this subspecies, see the Service's March 5, 1993, final rule listing the coastal population of the western snowy plover as a threatened species (58 FR 12864).

The Pacific coast population of the western snowy plover breeds in loose colonies primarily on coastal beaches from southern Washington to southern Baja California, Mexico. On the Pacific coast, larger concentrations of breeding birds occur in the south than in the north, suggesting that the center of the plovers' coastal distribution lies closer to the southern boundary of California (Page and Stenzel 1981). In Baja California, Mexico, snowy plovers are distributed across 28 sites, with concentrations at six coastal lakes (Dra. Graciela De La Graza Garcia, Director General of Conservation Ecology and Natural Resources, United States of Mexico, *in litt.*, 1992). Other less common nesting habitat includes salt pans, coastal dredged spoil disposal sites, dry salt ponds, and salt pond levees and islands (Widrig 1980, Wilson 1980, Page and Stenzel 1981). Sand spits, dune-backed beaches, unvegetated beach strands, open areas around estuaries, and beaches at river mouths are the preferred coastal habitats for nesting (Stenzel *et al.* 1981, Wilson 1980).

Based on the most recent surveys, a total of 28 snowy plover breeding sites or areas currently occur on the Pacific Coast of the United States. Two sites occur in southern Washington—one at Leadbetter Point, in Willapa Bay (Widrig 1980), and the other at Damon Point, in Grays Harbor (Anthony 1985). In Oregon, nesting birds were recorded in 6 locations in 1990 with 3 sites (Bayocean Spit, North Spit Coos Bay and spoils, and Bandon State Park-Floras Lake) supporting 81 percent of the total coastal nesting population (Oregon Department of Fish and Wildlife, unpubl. data, 1991). A total of 20 plover breeding areas currently occur in coastal California (Page *et al.* 1991). Eight areas support 78 percent of the California coastal breeding population: San Francisco Bay, Monterey Bay, Morro Bay, the Callendar-Mussel Rock Dunes area, the Point Sal to Point Conception area, the Oxnard lowland, Santa Rosa Island, and San Nicolas Island (Page et al. 1991).

The coastal population of the western snowy plover consists of both resident and migratory birds. Some birds winter in the same areas used for breeding (Warriner *et al.* 1986, Wilson-Jacobs,

pers. comm. in Page *et al.* 1986). Other birds migrate either north or south to wintering areas (Warriner *et al.* 1986). Plovers occasionally winter in southern coastal Washington (Brittell *et al.* 1976). The recent discovery of snowy plovers wintering near Cape Shoalwater in Pacific County, Washington, represents the northernmost record of wintering snowy plovers on the Pacific coast (Scott Richardson, Washington Department of Wildlife, pers. comm., 1994). From 43 to 81 plovers wintered on the Oregon coast between 1982–1990, primarily on 3 beach segments (Oregon Department of Fish and Wildlife 1994). The majority of birds, however, winter south of Bodega Bay, California (Page *et al.* 1986). Wintering plovers occur in widely scattered locations on both coasts of Baja California and significant numbers have been observed on the mainland coast of Mexico at least as far south as San Blas, Nayarit (Page *et al.* 1986). Many interior birds west of the Rocky Mountains winter on the Pacific coast (Page *et al.* 1986, Stern *et al.* 1988). Birds winter in habitats similar to those used during the nesting season.

Widely varying nest success (percentage of nests hatching at least one egg) and reproductive success (number of young fledged per female, pair, or nest) are reported in the literature. Nest success ranges from 0 to 80 percent for coastal snowy plovers (Widrig 1980, Wilson 1980, Saul 1982, Wilson-Jacobs and Dorsey 1985, Wickham unpubl. data in Jacobs 1986, Warriner *et al.* 1986). Instances of low nest success have been attributed to a variety of factors, including predation, human disturbance, and inclement weather conditions. Reproductive success ranges from 0.05 to 2.40 young fledged per female, pair or nest (Page *et al.* 1977, Widrig 1980, Wilson 1980, Saul 1982, Warriner *et al.* 1986, Page 1988). Page *et al.* (1977) estimated that snowy plovers must fledge 0.8 young per female to maintain a stable population. Reproductive success falls far short of this threshold at many nesting sites (Widrig 1980, Wilson 1980, Warriner *et al.* 1986, Page 1988, Page 1990).

Management Considerations

Historic records indicate that nesting western snowy plovers were once more widely distributed in coastal California, Oregon, and Washington than they are currently. In coastal California, snowy plovers bred at 53 locations prior to 1970 (Page and Stenzel 1981). Since that time, no evidence of breeding birds has been found at 33 of these 53 sites, representing a 62 percent decline in breeding sites (Page and Stenzel 1981). The greatest losses of breeding habitat were in southern California, within the central portion of the snowy plover's coastal breeding range. In Oregon, snowy plovers historically nested at 29 locations on the coast (Charles Bruce, Oregon Department of Fish and Wildlife, pers. comm., 1991). In 1990 only 6 nesting colonies remained, representing a 79 percent decline in active breeding sites. In Washington, snowy plovers formerly nested in at least 5 sites on the coast (Eric Cummins, pers. comm., 1991). Today only 2 colony sites remain active, representing, at minimum, a 60 percent decline in breeding sites.

In addition to loss of nesting sites, the plover breeding population in California, Oregon, and Washington has declined 17 percent between 1977 and 1989 (Page *et al.* 1991). Declines in the breeding population have been specifically documented in Oregon and California. Breeding season surveys along the Oregon coast from 1978 to 1993 show that the number of adult snowy plovers has declined significantly at an average annual rate of about 7 percent (Oregon Department of Fish and Wildlife 1994). The number of adults has declined from a high of 142 adults in 1981 to a low of 30 adults in 1992 (Oregon Department of Fish and Wildlife 1994; Randy Fisher, Oregon Department of Fish and Wildlife, *in litt.*, 1992). If the current trend continues, breeding snowy plovers could disappear from coastal Oregon by 1999. In 1981, the coastal California breeding population of snowy plovers was estimated to be 1,565 adults (Page and Stenzel 1981). In 1989, surveys revealed 1,386 plovers (Page *et al.* 1991), an 11 percent decline in the breeding population. The population decline in California may be greater than indicated; the 1989 survey results are considered more reliable than the earlier estimates, which may have underestimated the overall population size (Gary Page, pers. comm., 1991).

Although there are no historic data for Washington, it is doubtful that the snowy plover breeding population in Washington was ever very large (Brittell *et al.* 1976). However, loss of nesting sites in this state probably has resulted in a reduction in their overall population size. In recent years, fewer than 30 birds have nested on the southern coast of Washington (James Atkinson, pers. comm, 1990; Eric Cummins, pers. comm., 1991). In 1991, only one successful brood was detected in the State (Tom Juelson, Washington Department of Wildlife, *in litt.*, 1992).

Survey data also indicate a decline in wintering snowy plovers, particularly in southern California. The number of snowy plovers observed during Christmas Bird Counts from 1962 to 1984 significantly decreased in southern California despite an increase in observer participation in the counts (Page *et al.* 1986). This observed decline was not accompanied by a significant loss of wintering habitat over the same time period (Page *et al.* 1986).

The most important form of habitat loss to coastal breeding snowy plovers has been encroachment of European beachgrass (*Ammophila arenaria*). This non-native plant was introduced to the west coast around 1898 to stabilize dunes (Wiedemann 1987). Since then it has spread up and down the coast and now is found from British Columbia to southern California (Ventura County). European beachgrass is currently a major dune plant at about 50 percent of California breeding sites and all of those in Oregon and Washington (J.P. Myers, National Audubon Society, *in litt.*, 1988). Stabilizing sand dunes with European beachgrass has reduced the amount of unvegetated area above the tideline, decreased the width of the beach, and increased its slope. These changes have reduced the amount of potential snowy plover nesting habitat on many beaches and may hamper brood movements. The beachgrass community also provides habitat for snowy plover predators that historically would have been largely precluded by the lack of cover in the dune community. Cost effective methods to control or eradicate European beachgrass have not yet been found.

In the habitat remaining for snowy plover nesting, human activity (e.g., walking, jogging, running pets, horseback riding, off-road vehicle use, and beach raking) is a key factor in the ongoing decline in snowy plover coastal breeding sites and breeding populations in California, Oregon, and Washington. The nesting season of the western snowy plover (mid-March to mid-September) coincides with the season of greatest human use on beaches of the west coast (Memorial Day through Labor Day). Human activities detrimental to nesting snowy plovers include unintentional disturbance and trampling of eggs and chicks by people and unleashed pets (Stenzel *et al.* 1981, Warriner *et al.* 1986, P. Persons, *in litt.*, 1992), off-road vehicle use (Widrig 1980, Stenzel *et al.* 1981, Anthony 1985, Warriner *et al.* 1986, Page 1988, Philip Persons, *in litt.*, 1992); horseback riding (Woolington 1985, Page 1988, Philip Persons, *in litt.*, 1992); and beach raking (Stenzel *et al.* 1981). Page *et al.* (1977)

found that snowy plovers were disturbed more than twice as often by such human activities than all other natural causes combined.

In the few instances where human intrusion into snowy plover nesting areas has been precluded either through area closures or by natural events, nesting success has improved. The average number of young fledged per nesting pair increased from 0.75 to 2.00 after the nesting site at Leadbetter Point, Washington was closed to human activities (Saul 1982). Similarly, vehicle closure on a portion of Pismo Beach, California, led to an eight-fold increase in the nesting plover population (W. David Shuford, Point Reyes Bird Observatory, *in litt.*, 1989). After beach access was virtually eliminated by the 1989 earthquake, fledging success increased 16 percent at Moss Landing Beach, California (Page 1990).

Predation by mammalian and avian predators is a major concern at a number of nesting sites. Western snowy plover eggs, chicks, and adults are taken by a variety of avian and mammalian predators. These losses, particularly to avian predators, are exacerbated by human disturbances. Of the many predators, American crows (*Corvus brachyrhynchos*), ravens (*C. corax*), and red fox (*Vulpes*) have had a significantly adverse effect on reproductive success at several colony sites (Wilson-Jacobs and Meslow 1984, Page 1988, John and Jane Warriner, Point Reyes Bird Observatory, *in litt.*, 1989, Page 1990, Stern *et al.* 1991). Accumulation of trash at beaches attracts these as well as other predators (Stern *et al.* 1990, Hogan 1991).

At most active breeding sites few measures have been implemented specifically to protect snowy plovers. Artificial measures have been used at several nesting sites to improve snowy plover nesting success. In 1991, the California Department of Parks and Recreation and the Service conducted plover nest enclosure studies on National Wildlife Refuge and State property in the Monterey area. Hatching success of plover nests in enclosures was 81 percent as compared to 28 percent for unprotected nests (Richard G. Rayburn, California Department of Parks and Recreation, *in litt.*, 1992, Elaine Harding-Smith, U.S. Fish and Wildlife Service, pers. comm., 1992). Use of nest enclosures at Coos Bay North Spit resulted in up to 88 percent nesting success, compared to as low as 9 percent success for unprotected nests (Stern *et al.* 1991, Randy Fisher, *in litt.*, 1992). Nest enclosures continue to be used at the above sites. The Service recently finalized a predator management plan for Salinas River National Wildlife Refuge, which proposes management measures to reduce red fox populations on the Refuge (Parker and Takekawa 1993).

In a few areas in California, including the Marine Corps Base at Camp Pendleton, plovers have benefitted somewhat from protective measures taken for the endangered California least tern (*Sterna antillarum browni*). At Vandenberg Air Force Base in southern California, beaches are closed to all foot and vehicular traffic during the least tern nesting season (Donna Brewer, U.S. Fish and Wildlife Service, pers. comm., 1991). Dogs and cattle have been restricted from some beaches at Point Reyes National Seashore (Gary Page, pers. comm., 1991), and some beaches on Federal land in Oregon have been closed to vehicles to protect plovers and other wildlife (Charles Bruce, pers. comm., 1991). Leadbetter Point in Washington (Fish and Wildlife Service), a 5-acre spoil disposal site in Coos Bay (Bureau of Land Management), and a 25-acre spoil disposal site in Coos Bay (Corps of Engineers) are the only nesting sites where human access has been restricted in the past specifically for plover nesting. In 1993, at Oregon Dunes National Recreation Area, the Forest Service used temporary fencing and signing to direct beach visitors away from snowy plover nesting areas. At Coos Bay, Oregon, the Corps of Engineers is proposing two projects to create or improve plover nesting habitat using dredged spoils.

Relationship to Recovery

Section 2(c)(1) of the Act declares that ''all Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.'' Section 3(3) of the Act defines conservation as the use of all methods and procedures needed to recover an endangered or threatened species to the point at which it no longer needs to be listed under the Act. The Act mandates the conservation of listed species through different mechanisms, such as section 7 (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and insuring that Federal actions will not likely jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat); section 9 (prohibition of taking of listed species); section 10 (wildlife research permits, and other permits based on conservation plans); section 6 (cooperative agreements and Federal grants); section 5 (land acquisition); and research.

A recovery plan under section 4(f) of the Act is the ''umbrella'' that eventually guides all of these activities and promotes species' conservation and eventual delisting. Recovery plans provide guidance, which may include population goals and identification of areas in need of protection or special management, so that the species' status may improve to where it may be removed from the list of endangered and threatened wildlife and plants. Recovery plans usually include management recommendations for areas proposed or designated as critical habitat.

The Service considers the conservation of a species in a designation of critical habitat. The designation of critical habitat will not, in itself, result in the recovery of the species, but is one of several measures available to contribute to conservation of the species. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) that require special management. The protection given critical habitat under section 7 also immediately increases the protection given to these primary constituent elements and essential areas and preserves options for the long-term conservation of the species. The protection of these areas may also shorten the time needed to achieve recovery. Designation of critical habitat also heightens the awareness of the public and agencies of species conservation needs.

Designating critical habitat does not create a management plan, establish numerical population goals, or prescribe specific management actions, and it has no direct effect on areas not designated. Specific management recommendations for critical habitat are addressed in recovery plans, management plans, and section 7 consultations. Areas outside of critical habitat also may have an important role in conservation of a listed species. A designation of critical habitat may be reevaluated and revised at any time that new information indicates changes are warranted. In considering whether to designate critical habitat, the Service will evaluate whether land management plans, recovery plans, or other conservation strategies have been developed and fully implemented that may reduce the need for the additional protection provided by a critical habitat designation.

Critical Habitat

Definition

Critical habitat, as defined by section 3 of the Act (16 U.S.C. 1532) means (i) the specific areas within the geographical area occupied by a species at the time it is listed on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon determination that such areas are essential for the conservation of the species. The term ''conservation'' as defined in section 3(3) of the Act, means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.'' 16 U.S.C. 1532(3). Critical habitat, then, is to include biologically suitable areas necessary to recovery of the species. Critical habitat may be proposed for species that are already listed as threatened or endangered. Section 3 further states that in most cases the entire range of a species should not be encompassed within critical habitat.

Primary Constituent Elements

The Act requires critical habitat designations to be based on the best scientific data available 16 U.S.C. 1533(a)(2). In determining what areas are critical habitat, the Service considers those physical and biological attributes that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, the following (1) Space for individual and population growth, and normal behavior; (2) food, water, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally (5) habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species (50 CFR 424.12).

In considering the designation of critical habitat, the Service focuses on the primary physical or biological constituent elements of the area that are essential to the conservation of the species (50 CFR 424.12). Primary constituent elements may include, but are not limited to, roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types (50 CFR 424.12).

The proposed designation of critical habitat for the coastal population of the western snowy plover is based on the following physical and biological features and primary constituent elements:

* Space for individual and population growth.
* Food, water, air, light, minerals, and other nutritional or physiological requirements.
* Roost sites.
* Sites for breeding, reproduction, and rearing of offspring.
* Habitats (nesting grounds and feeding sites) that are protected from disturbance and are representative of the historic geographical and ecological distribution of the species.

For all areas of critical habitat proposed for the plover, these physical and biological features and primary constituent elements are provided or will be provided by intertidal beaches (between mean low water and mean high tide), associated dune systems, and river estuaries. Important components of the beach/dune/estuarine ecosystem include surf-cast kelp, sparsely vegetated foredunes, interdunal flats, spits, washover areas, blowouts, intertidal flats, salt flats, and flat rocky outcrops. Several of these components (sparse vegetation, salt flats) are mimicked in artificial habitat types used less commonly by snowy plovers (i.e., dredge spoil sites and salt ponds and adjoining levees). Functional suitability of areas containing the features listed above is also contingent upon isolation from human disturbance and predation. These attributes are considered essential to the conservation of the coastal population of the western snowy plover.

The primary constituent elements of snowy plover nesting, foraging, and roosting habitat could occur on virtually every beach along the Pacific coast. Therefore, biologically based criteria were developed as a basis for further identifying critical habitat areas and related recovery objectives. The key components of site importance as it relates to recovery of the species were existing nesting capacity, wintering capacity, and geographic location. Those sites in Washington, Oregon, and California that currently support the majority of breeding and wintering western snowy plovers were initially selected for critical habitat designation. Several additional sites in California were selected for designation to avoid a large gap in the geographic distribution of breeding or wintering birds. Important nesting and wintering sites were identified from Page and Stenzel (1981), Page *et al.* (1986), Page *et al.* (1991), Washington Department of Wildlife (1993), and Oregon Department of Fish and Wildlife (1994); and through personal communications with professionals in the field.

Proposed Critical Habitat Designation

The Service has identified 28 critical habitat areas totalling approximately 20,000 acres and about 210 miles of coastline, or about 10 percent of the coastline of California, Oregon, and Washington. Of the 28 areas, 19 critical habitat areas are proposed in California, 7 in Oregon, and 2 in Washington. Within the last decade, these sites provided habitat for about 65 percent of nesting and 60 percent of wintering western snowy plovers in California; 95 percent of nesting and 95 percent of wintering plovers in Oregon; and 100 percent of nesting and about 90 percent of wintering plovers in Washington. Protection and special management of these sites are essential to recovery of the coastal population of the western snowy plover and will form the cornerstone of a recovery plan.

In California, approximately 25 percent of proposed critical habitat occurs on Federal lands. About 50 percent of critical habitat proposed on non-Federal lands is State-owned, with the California Department of Parks and Recreation being the primary land manager. In Oregon about 45 percent of proposed critical habitat areas occurs on Federal land with the remainder controlled primarily by State agencies. Of the two sites proposed in the State of Washington, one is State property, and the second includes State lands adjacent to Willapa National Wildlife Refuge.

The Service excluded from proposed critical habitat designation, lands that already provide adequate protection for the western snowy plover. These sites include lands that provide plover nesting and wintering habitat within three National Wildlife Refuge complexes—Willapa National Wildlife Refuge in Washington, and Salinas National Wildlife Refuge and the Southern California Coastal Complex in California. Programs currently exist on these refuges to protect snowy plovers. Also excluded are lands owned and/or managed by the National Park Service. Important plover nesting areas on National Park Service lands (such as Santa Rosa Island) are relatively inaccessible by the public. Any recreational use impacts or other identifiable impacts on breeding and wintering birds or their habitat would

be covered through the section 7 consultation process. Also excluded are key nesting areas on Camp Pendleton in San Diego County, California. A programmatic consultation currently underway between the Service and the Department of the Navy will address any adverse effects to nesting plovers and their habitat. For the above sites, therefore, designation of critical habitat would provide no additional benefit to the species. Prior to making a final decision on this proposal the Service will continue to consider whether existing management provides adequate protection for nesting and wintering western snowy plovers. For example, we are working with the Resources Agency of California to identify California State Park lands in this proposal that are currently providing adequate protection for these birds. The Service may exclude adequately protected sites from designation.

The Service also excluded from proposed critical habitat sites that would significantly conflict with the survival and recovery objectives of other listed species. Significant conflicts were identified between the habitat needs of snowy plovers and biological objectives for the California clapper rail (*Rallus longirostris obsoletus*), light-footed clapper rail (*Rallus longirostris levipes*), and salt marsh harvest mouse (*Reithrodontomys raviventris*). The two rails and mouse are federally listed endangered species.

The California clapper rail and salt marsh harvest mouse inhabit estuarine marshes of San Francisco Bay. Over 90 percent of historic tidal marsh habitat in the Bay has been lost, primarily through the development of commercial salt ponds (Josselyn 1983). Western snowy plovers have taken advantage of this artificial salt pond habitat, primarily in south San Francisco Bay, and nest on levees or islands within active salt ponds or in abandoned dry salt ponds. This artificial habitat supports the largest subpopulation of snowy plovers within its range (Page *et al.* 1991). This same habitat, with the exception of two salt pond sites used by nesting snowy plovers, however, is identified in the recovery plan for the California clapper rail and salt marsh harvest mouse for restoration to historic tidal marsh (U.S. Fish and Wildlife Service 1984; Peter Sorensen, Fish and Wildlife Service, pers. comm., 1994).

The light-footed clapper rail inhabits coastal tidal marshes from Santa Barbara County south to Baja California, Mexico. Over two-thirds of historic tidal marsh habitat has been lost (Speth 1971) primarily to urban development, flood control, and oil development. Several sites in Ventura, Orange, and San Diego Counties provide nesting and/or wintering habitat for snowy plovers, but also provide high quality clapper rail habitat or represent high priority tidal marsh restoration sites in the light-footed clapper rail recovery plan (U.S. Fish and Wildlife Service 1985). These sites are Bolsa Chica, Agua Hedionda Lagoon, Batiquitos Lagoon, San Elijo Lagoon, San Dieguito Lagoon, Los Penasquitos Lagoon, the San Diego River mouth, and the marshes of south San Diego Bay. Because the light-footed clapper rail is endangered and the habitat needs of this species differ significantly from those of the western snowy plover, the Service is excluding these sites from critical habitat designation.

Overall, this proposal focuses the primary recovery objectives for the western snowy plover on coastal beach and dune habitats, which represent a significant proportion of natural nesting and wintering habitat of the coastal population of the western snowy plover. These natural habitats, therefore, are considered essential to conservation of this threatened species. Protection of these sites as well as plover habitat on Fish and Wildlife Service, National Park Service, and Navy lands at Camp Pendleton will provide added protection for about 76 percent of nesting and 65 percent of wintering plovers rangewide. Sites excluded from critical habitat designation for the various reasons given above should not be considered as unnecessary to conservation of the species. The recovery plan for the coastal population of the western snowy plover will address the value of these areas to species' recovery. At the present time, these excluded sites support about 20 percent of the coastal population of the western snowy plover and during the recovery process may provide birds to supplement populations in essential breeding and wintering areas. If focusing recovery on the 28 proposed critical habitat areas proves unattainable, additional sites may be proposed as critical habitat in the future to aid in recovery of the species.

At this time, conservation of the Pacific coast population of the western snowy plover requires sufficient management efforts at all sites proposed as critical habitat. However, new information that may be grounds for review of this determination includes, but is not limited to, data showing that the species is more or less vulnerable than currently thought, a change in the species' status due to catastrophic events such as disease or weather, or evidence that continuing efforts to conserve the species are insufficient.

Many of the proposed critical habitat areas include large expanses of beach. For proposed sites that support nesting snowy plovers, nesting colonies may occupy only a small portion of the proposed critical habitat area. The larger critical habitat area is needed, however, because foraging occurs throughout the intertidal and foredune portions of the beach. Designation of larger critical habitat areas also will allow for natural shifting of plover nesting colonies as a result of vegetational changes and weather related events that reconfigure suitable nesting habitat.

Regulations governing designation of critical habitat (50 CFR 424 12(h)) state that critical habitat shall not be designated within foreign countries. Although the Pacific coast population of the western snowy plover's breeding and wintering range extends into Mexico, no critical habitat is proposed outside United States jurisdiction.

Effects of Critical Habitat Designation

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Regulations found at 50 CFR 402.02 define destruction or adverse modification of critical habitat as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical, that is, its primary constituent elements.

An activity will not adversely modify an area within designated critical habitat that does not contain any constituent elements. For example, existing areas such as parking lots, paved roads, and various kinds of structures within the proposed critical habitat boundaries clearly would not furnish habitat or biological features for western snowy plovers. Furthermore, some activities would not be restricted by critical habitat designation because they would have no significant adverse effect on the primary constituent elements.

Activities that may adversely modify critical habitat are subject to regulation under section 7(a) of the Act if they are carried out, authorized, or funded by a Federal agency. The purpose of consultations between the Service and

other Federal agencies is to ensure that activities are carried out in a manner that is not likely to jeopardize the continued existence of listed species or adversely modify or destroy its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act and 50 CFR 402.10 of the regulations, require Federal agencies to confer informally with the Service on any action that is likely to result in destruction or adverse modification of proposed critical habitat.

Activities areas that could adversely affect proposed critical habitat of the coastal population of the western snowy plover fall into seven general categories:

(1) projects or management activities that cause, induce, or increase human-associated disturbance on beaches, including operation of off-road vehicles on the beach and beach cleaning. These activities may reduce the functional suitability of nesting, foraging, and roosting areas. Activities that may adversely modify critical habitat areas that support wintering birds (September 15–February 29) include beach cleaning that removes surfcast kelp and driftwood, dogs off leash, off-road vehicle driven at night, and falcon flying. Activities within posted fenced or otherwise protected nesting areas (March 1–September 14) that may adversely modify critical habitat areas include camping, off-road vehicle use (day or night), walking, jogging, clam digging, pets on or off leash, livestock grazing, sunbathing, picnicking, horseback riding, hang gliding, kite flying, model airplane flying, beach cleaning, and falcon flying in or over active nesting areas. With very few exceptions, the nesting area is a small fraction of the entire beach. Thus, no more that 5 to 15 percent of the vast majority of the units would be removed from these kinds of public uses during the breeding season. The Service would work with landowners to develop signs or fencing or other means to protect these small nesting areas. Furthermore, western snowy plovers occupy the soft sandy portions of the upper beach or foredunes, and people tend to prefer lower beach or sand that is regularly washed by the tides. On a case by case basis, the few restrictions could be removed after the plovers had finished breeding or left wintering grounds.

(2) actions that would promote unnatural rates or sources of predation. For example, producing human-generated litter that attracts predators, or designing exclosures that promote perching by avian predators may adversely modify critical habitat by reducing its functional suitability to support nesting snowy plovers.

(3) actions that would promote the invasion of non-native vegetation.

(4) activities associated with maintenance and operation of salt ponds. Activities that may adversely modify or destroy critical habitat when conducted during the snowy plover nesting season include flooding inactive salt ponds; raising the water level in active salt ponds; grading, resurfacing, riprapping, or placing dredged spoils on levees; and driving maintenance vehicles on levees. However, levee maintenance activities also may benefit snowy plovers by providing vegetation-free habitat for nesting. The Service would work with landowners to avoid harmful activities during the breeding season.

(5) dredge spoil disposal activities that may adversely modify critical habitat when conducted during the nesting season include deposition of spoil material, laying of pipes to transport the material, and use of machinery to spread the material. However, dredge spoil disposal sites also may benefit snowy plovers by providing nesting habitat free of European beachgrass. The Service would work with landowners to avoid harmful activities during the breeding season.

(6) shoreline erosion control projects and activities that may alter the topography of the beach. Activities that may adversely modify or destroy nesting, foraging, and roosting habitat include beach nourishment (sand deposition, spreading of sand with machinery); construction of breakwaters and jetties (interruption of sand deposition); dune stabilization using native and non-native vegetation or fencing (decreased beach width, increased beach slope, reduction in blowouts and other preferred nesting habitat); beach leveling (increased tidal reach, removal of sparse vegetation used by chicks for shelter, destruction of rackline feeding habitat). Beach nourishment projects, however, also may have the potential to benefit nesting or wintering plover habitat on some sites experiencing serious erosion. The Service would work with landowners to avoid harmful activities when the birds are present.

(7) contamination events. Contamination through oil spills or chemical releases may adversely modify critical habitat by contaminating snowy plovers and/or their food sources.

Federal agencies that may be required to consult with the Service on one or more of these activities include the Forest Service, Bureau of Land Management, Federal Aviation Administration, and the Departments of the Army (including the Corps of Engineers), Navy, and Air Force.

In addition several other species that are listed under the Act occur in the same general areas as western snowy plovers. These species share the coastal beach/dune/estuarine ecosystem with snowy plovers. All of these species occurred historically in association with western snowy plovers in this Pacific coast ecosystem, and thus, the habitat requirements of these species do not significantly conflict with those of the snowy plover. Therefore, any plans prepared for sites designated as critical habitat for the snowy plover should be considered ecosystem management plans that accommodate needs of other listed or proposed species that also occur on the site. In doing so, these proposed snowy plover critical habitat areas more aptly represent critical habitat for a multitude of species inhabiting the coastal beach/dune/estuarine ecosystem. Federal agencies proposing management actions for other listed species may affect critical habitat for the western snowy plover and be required to initiate formal consultation under section 7 of the Act. Conversely, proposed management actions for the benefit of the plover or its habitat may affect other listed species. The Service will work with other Federal agencies to develop ecosystem plans that provide for the needs of all listed species.

When the Service issues an opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, the Service also provides reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Consideration of Economic and Other Factors

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating any particular area as critical habitat. For example, beneficial impacts of critical habitat designation may include (1) a clear notification to Federal agencies and the public of the existence and importance of critical habitat, (2) voluntary increased protection of snowy plovers on some private lands, (3) stimulation of additional attention to the requirements of section 9 of the Act by private, municipal, county, and state landowners, (4) additional protection for other listed and non-listed species that occur in areas designated as critical habitat for the snowy plover, and (5) preservation of the beach-dune-estuarine ecosystem. Section 4(b)(2) authorizes the Service to exclude any area from critical habitat designation if the Service determines the benefits of excluding the area outweigh the benefits of including it, except that the Service

may not exclude an area if the Service determines that doing so would result in extinction of the species. Pursuant to 50 CFR 424.19, the Service will consider the economic and other relevant impacts of designating of critical habitat for the coastal population of the western snowy plover.

Economic Analysis

The economic analysis is designed to provide information to assist in making determinations about areas which may be excluded from critical habitat. It is conducted by examining how a designation of critical habitat for the snowy plover would be expected to affect the use of Federal lands as well as non-Federal activities authorized or funded by Federal agencies. Activities on private or state-owned lands that do not involve Federal permits, funding or other Federal actions would not be restricted by a designation of critical habitat.

The economic analysis distinguishes between economic effects caused by the listing of the snowy plover as threatened and those that would be caused by the proposed designation of critical habitat. Furthermore, if a proposed action would otherwise have been limited or prohibited by another statute or regulation, such as the Clean Water Act, those economic effects would not be attributable to either listing or critical habitat designation under the Endangered Species Act.

Economic effects are the costs or benefits to society of precluding or limiting specific land uses in areas being considered for designation as critical habitat. Economic effects are categorized as either efficiency or distributional. Economic efficiency effects are those consequences of critical habitat designation that cause changes in national income. Economic distribution effects pertain to regional changes that may have offsetting effects elsewhere in the national economy. Efficiency effects are used primarily to determine whether an action is economically sound and whether expected benefits exceed costs. Distributional effects are used to evaluate regional and local economic impacts.

Consultation Under Section 7 of the Endangered Species Act

Section 7 of the Act (16 USC 1536), requires Federal agencies to insure that activities they fund, authorize, or carry out are not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat. Jeopardy is defined at 50 CFR 402.02 as any action reasonably expected to reduce appreciably the likelihood of both the survival and recovery of the species in the wild by reducing its reproduction, numbers, or distribution. Destruction or adverse modification of critical habitat is defined at 50 CFR 402.02 as any direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of the species.

Under section 7, a Federal agency must consult with the Service if it determines that an action may affect a listed species or its critical habitat. During consultation, the Service reviews the agency's proposed action and prepares a biological opinion as to whether that action is likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat.

In cases where species are listed without critical habitat, the Service determines only whether the proposed action is likely to jeopardize the continued existence of the species. In cases where critical habitat has been designated, the Service also determines whether the proposed action is likely to destroy or adversely modify critical habitat. The additional requirement for Federal agencies to avoid destruction and adverse modification of critical habitat may result in incremental restrictions on agency actions beyond those required to avoid jeopardy or for other statutory or regulatory purposes.

The incremental restrictions arising from section 7 consultations on destruction or adverse modification are the only way that designating critical habitat produces an economic impact. To isolate that incremental impact, total economic effects of limitations on a proposed action within critical habitat must be apportioned between a species listing (jeopardy, take prohibitions, etc.) and critical habitat designation (destruction or adverse modifications).

If the action is found to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat, the Service is required to provide, to the extent possible, reasonable and prudent alternatives to the proposed action. By definition, reasonable and prudent alternatives allow the proposed action to go forward while removing the conditions that jeopardize the species or destroy or adversely modify its critical habitat. For the snowy plover, the Service believes that reasonable and prudent alternatives developed as part of consultation will allow most activities to continue, subject to some limitations. Such alternatives might include fencing or seasonal closure of certain areas to human uses, as well as changes in beach erosion control or dredging plans.

Determination of whether an action will result in jeopardy and/or adverse modification is dependent upon a number of factors, such as the type of project, its size, location, and duration. In many cases, sufficient management actions will permit agencies to avoid adverse modification with little or no effect on their activities. The Service believes that, in the case of the snowy plover, the large majority of economic impacts as a result of section 7 consultation will occur as a result of listing, through the application of the jeopardy standard and incidental take prohibitions.

Framework of Analysis

The economic analysis examines the costs and benefits of precluding or limiting specific land uses within areas designated as critical habitat. It is cast in a ''with'' critical habitat versus a ''without'' critical habitat framework and seeks to measure the net change in the various categories of benefits and costs when the critical habitat designation is imposed on the existing baseline.

National and Regional Effects

The economic effects of critical habitat designation consist of those affecting national income and those that are important on a local or regional level.

National economic (efficiency) costs represent changes in national income (the total value of goods and services). They are measured as changes in consumer surplus and producer surplus (economic rent). Economic efficiency analysis seeks to maximize national income from a given resource base. Gains and losses in recreation values, increased costs imposed on management agencies or development projects, loss of earnings by displaced labor or capital assets, and changes in revenue from user fees (beach user fees, etc.) are typical national economic costs of critical habitat designation. The economic cost of designating critical habitat includes any additional costs that would be imposed, regardless of whether they are incurred by a Federal agency, a state agency or the private sector so long as they stem from a section 7 consultation regarding destruction or adverse modification of the habitat proposed to be designated.

Regional economic (distributional) impacts represent transfers between people, groups, or geographic regions, with no net effect on the national total. Distributional impacts relate to equity and fairness considerations and deal

primarily with how income and wealth are divided among regions and groups. Changes in employment, household income and local or state tax revenues are frequently used to portray regional effects.

A Net-Cost With and With-out Approach

Designation of critical habitat will often result in both economic gains and losses. Careful application of a with and without analytical framework will help to distinguish between the two. For example, with critical habitat recreation such as bird watching may be preserved that otherwise would have been lost because of a development project or continued habitat loss. The national economic value of the preserved recreation and the regional jobs and household income it produces are gains, or benefits, of designation. Without critical habitat, an area may have been used for developed recreational purposes, but critical habitat designation would prohibit those uses. The values and jobs associated with that now precluded use become a loss (benefit foregone) due to critical habitat designation. It is the net effect of these changes in both the national and regional accounts that is important. Describing what probably would have happened to an area of potential critical habitat in both the with and without scenarios, both currently and in the future, is an important part of the analysis. The availability of data limits quantification of the net effects in many instances.

Baseline for Analysis

As noted earlier, the economic effects of critical habitat designation are incremental to those already created by the Clean Water Act and other statutes, and by listing the snowy plover as threatened. Actions taken for those other purposes establish the baseline for this analysis. It is the marginal increase in species protection provided by designation of critical habitat and the marginal change in costs, regional impacts, and benefits that the designation produces that are relevant to this analysis.

Data Requirements

The Service has notified Federal agencies having jurisdiction over the areas being proposed as critical and asked them to estimate the effect of designation on their activities. Each agency was sent detailed maps and legal descriptions of the proposed areas and asked to identify areas for which they were responsible. They were then asked to provide detailed descriptions of activities on those areas that may be affected by critical habitat designation, in three situations:

Without Listing: Activities that would have been taking place in the proposed area if there had been no listing of the snowy plover as threatened.

With Listing: Activities that would be taking place once any existing or anticipated restrictions to avoid jeopardy decisions in section 7 consultations were put in place. This level of activity becomes the baseline for evaluation of the incremental effect of critical habitat designation.

With Critical Habitat: Activities expected to take place once any anticipated restrictions to avoid adverse modification decisions in section 7 consultations were put in place. The difference between this level and the With-Listing level is the impact attributable to designating critical habitat.

Land management agencies were asked to quantify their responses as much as possible in terms of days of beach use, cattle grazing, etc., and to estimate any change in their operational costs as a result of listing and of designating critical habitat. Other Federal agencies that may be affected by critical habitat through their regulatory or funding roles were also sent maps and legal descriptions of the proposed critical habitat and were asked if any of the areas were involved in pending or anticipated permit or funding actions. Responses to those requests will form the empirical basis of the economic analysis. The Service is also seeking information about such possible actions during the public comment period.

The Exclusion Process

This section summarizes the procedure that will be followed prior to a final rule in determining whether or not to exclude an area (or areas) from designation as critical habitat for the western snowy plover. The criteria used to help reach a determination and the steps followed are described below.

Section 3(5)(A) of the Endangered Species Act of 1973 (Act), as amended, generally defines critical habitat as:

> (i) The specific areas within the geographical area occupied by the species, at the time it is listed * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection.

Section 3 further states that in most cases critical habitat will not encompass the entire range of the species. The Act also directs the Secretary to consider economic and other relevant impacts in the designation of critical habitat. Section 4(b)(2) states:

> The Secretary shall designate critical habitat, and make revisions thereto * * * on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

Exclusion of an area as critical habitat would only eliminate the protection provided by the destruction or adverse modification standard of section 7; it would not alleviate the need to comply with other requirements of the Act in that area, such as section 7 consultation on jeopardy and section 9 prohibitions on take. These requirements would apply regardless of whether or not critical habitat is designated for a particular area.

The authority to make determinations under section 4(b)(2) of the Act has been delegated to the Director of the Fish and Wildlife Service. Implementation of section 4(b)(2) requires three determinations: (1) The conservation benefits to the species of including an area as critical habitat, (2) the economic and other costs of including an area, and (3) the cumulative effects of exclusions on the probability of species extinction. If the exclusion of an area or areas from critical habitat would result in species extinction, then exclusion of the critical habitat area(s) would not be authorized under the Act.

The process used to evaluate critical habitat areas to determine whether the benefits of exclusion outweigh the benefits of inclusion as critical habitat can be summarized in several sequential steps:

Step 1 Identify areas that meet the definition of critical habitat in section 3(5) of the Act.

Step 2 Conduct an economic analysis to determine the anticipated economic consequences of designating areas as critical habitat.

Step 3 Identify the applicable economic, biological, and other information that need to be considered to determine whether to retain, exclude, or modify areas as critical habitat.

For the western snowy plover, the Service is proposing specific critical habitat areas that the Service believes are essential to the plovers' conservation. The biological value and

roles of each area in providing conservation benefits to the snowy plover have been identified in preparing the proposal. An economic analysis will be completed which estimates the potential economic effects of proposing critical habitat. The steps followed by the Service in designating critical habitat and in assessing the potential economic effects associated with a designation of the proposed areas will be fully described in the final rule and in the economic analysis report.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible in the conservation of endangered or threatened species and the protection of critical habitat. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Reasons why any habitat (either existing or additional areas) should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) Current or planned activities and their possible impacts on proposed critical habitat areas;

(3) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat;

(4) Economic values associated with benefits of designating critical habitat for the coastal population of the western snowy plover; and

(5) Information the Service might use, under section 4(b)(2) of the Act, in determining whether the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service during the 60-day comment period following publication of this proposed rule. The final decision on designation of critical habitat also will include any exclusion determinations.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal in the **Federal Register**. Such requests must be made in writing and should be sent to the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment and/or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 12866 and Regulatory Flexibility Act

This rule was reviewed by the Office of Management and Budget under Executive Order 12866. Based on the information discussed in this rule concerning public projects and private activities within critical habitat areas, there are no significant economic impacts resulting from the critical habitat designation. There are a limited number of actions on private land that have Federal involvement through funds or permits that may be affected by critical habitat designation. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1990. This rule does not require a Federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

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Author: The primary author of this proposed rule is Karen J. Miller, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846 (916/979–2725).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 USC 1361–1407; 16 USC 1531–1544; 16 USC 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by revising the ''critical habitat'' entry for ''Plover, western snowy'', under BIRDS, to read 17.95(b).

3. It is proposed to amend § 17.95(b) by adding, in the same alphabetical order as the species occurs in § 17.11(h), critical habitat of the Pacific coast population of the western snowy plover (*Charadrius alexandrinus nivosus*) to read as follows.

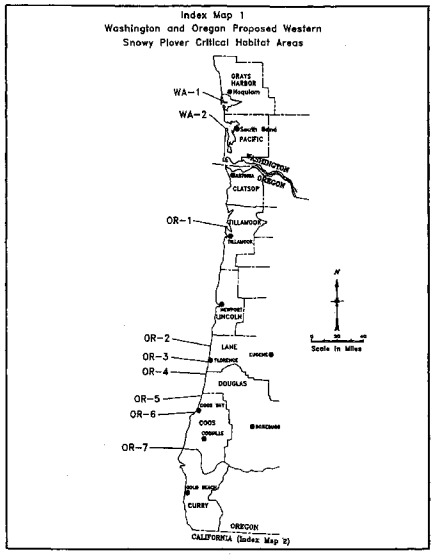
§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) * * *

* * * * *

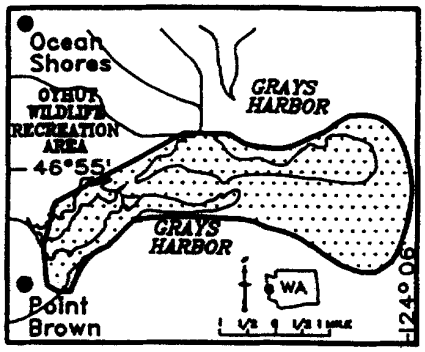
Western Snowy Plover (*Charadrius alexandrinus nivosus*)



Washington. Areas of land and water as follows:

WA–1. Damon Point, Grays Harbor County (Index Map 1)

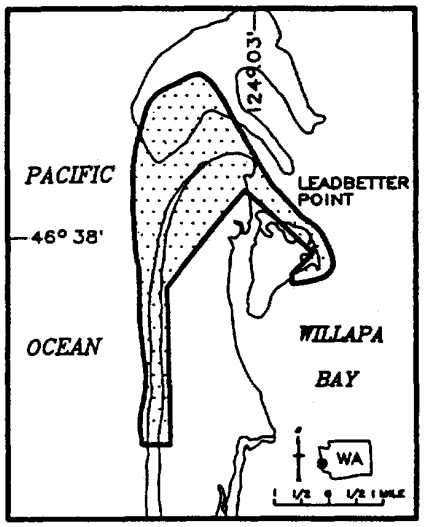
Beginning at 46°55′55″ N, 124°09′07″ W, thence northwesterly following the property line of the Oyhut Wildlife Recreation Area to 46°55′58″ N, 124°09′14″ W, thence northwesterly to 46°56′12″ N, 124°09′16″ W, thence northeasterly to 46°56′27″ N, 124°09′11″ W, thence northeasterly to 46°56′52″ N, 124°08′02″ W, thence east to MLW, thence southeasterly, southerly, and southwesterly following MLW around Damon Point to a point directly east of the point of beginning, thence west to the point of beginning. (Point Brown and Westport USGS 7.5″ Quads 1983)



WA–1 DAMON POINT

WA–2. Leadbetter Point, Pacific County (Index Map 1)

Beginning at 46°36′22″ N, 124°03′51″ W, thence northeasterly to 46°37′38″ N, 124°03′55″ W, thence northeasterly to 46°38′30″ N, 124°03′01″ W, thence southeasterly to 46°37′58″ N, 124°02′05″ W, thence southwesterly to 46°37′48″ N, 124°02′20″ W, thence south to MLW, thence northeasterly around the north end of Leadbetter Point, thence southerly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. Excludes all U.S. Fish and Wildlife Service property. (North Cove and Oysterville USGS 7.5″ Quads 1984)

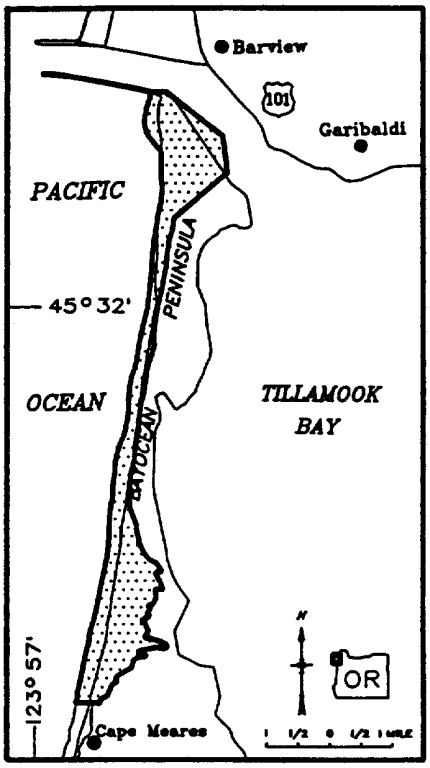


WA–2 LEADBETTER POINT

Oregon. Areas of land and water as follows:

OR–1. Bayocean Spit, Tillamook County (Index Map 1)

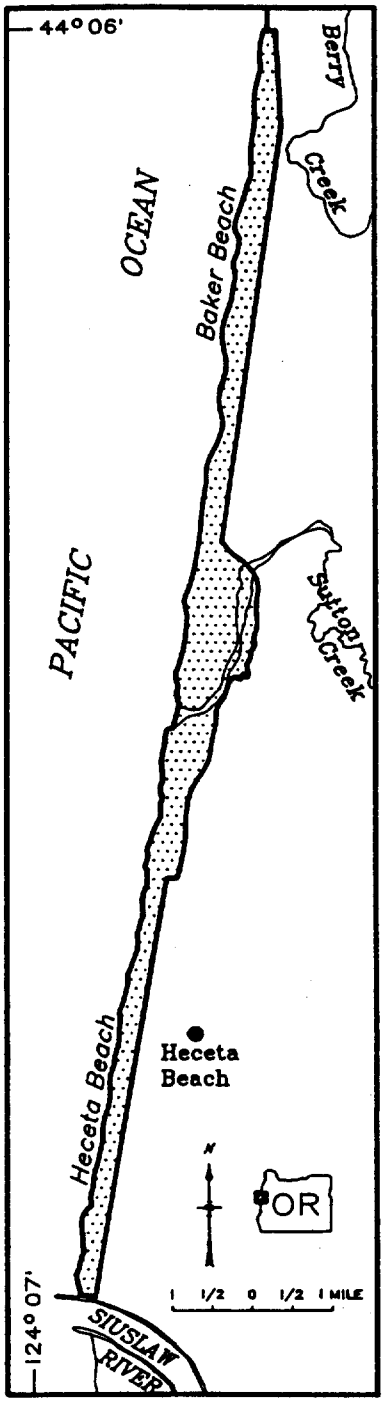
Beginning at 45°33′57″N, 123°56′50″W, thence north to MLW, thence southeasterly following MLW to 45°33′42″N, 123°56′21″W, thence southerly to 45°33′28″N, 123°56′18″W, thence southwesterly to 45°33′12″N, 123°56′45″W, thence southerly following the easterly edge of the sand depicted on the topographic map as a dashed line to 45°32′28″N, 123°56′54″W, thence southerly to 45°32′23″N, 123°56′56″W, thence southerly following the easterly edge of the sand depicted on the topographic map as a dashed line to 45°30′21″N, 123°57′21″W, thence west to MLW, thence northerly following MLW to the toe of the South Jetty, thence directly west to the point of beginning. (Garibaldi USGS 7.5″ Quad 1985)



OR–1 BAYOCEAN SPIT

OR–2. Heceta Head to Siuslaw River, Lane County (Index Map 1)

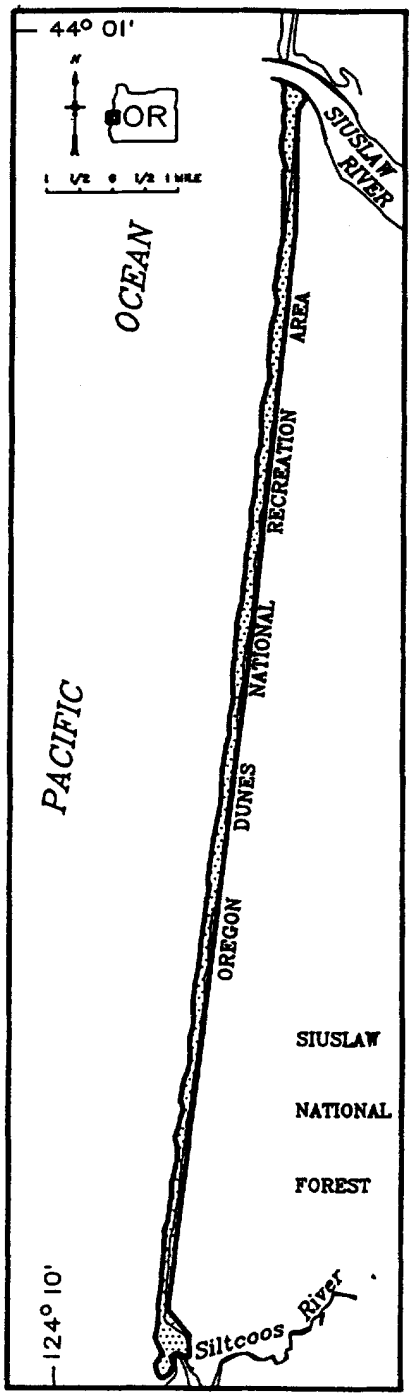
Beginning at 44°06′15″N, 124°07′20″W, thence southerly to 44°05′51″N, 124°07′18″W, thence southerly to 44°05′15″N, 124°07′26″W, thence southerly to 44°04′10″N, 124°07′35″W, thence southeasterly to 44°04′03″N, 124°07′23″W, thence southerly following the east edge of the sand depicted on the topographic map as a dashed line to 44°02′50″N, 124°07′53″W, thence westerly to 44°02′50″N, 124°07′57″W, thence southerly to 44°01′08″N, 124°08′19″W, thence westerly following the northerly toe of the North Jetty to MLW, thence northerly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Mercer Lake USGS 7.5″ Quad 1984)



OR–2 HECETA HEAD
TO SIUSLAW RIVER

OR–3. Siuslaw River to Siltcoos River, Lane County (Index Map 1)

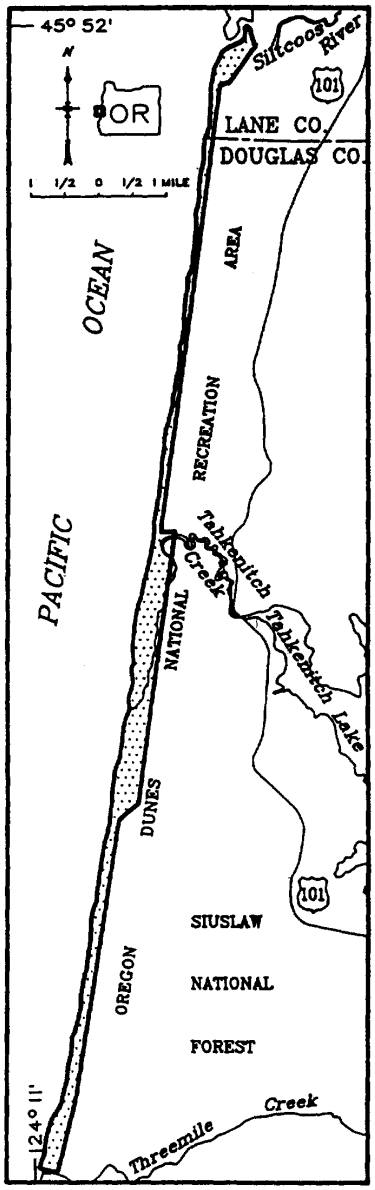
Beginning at 44°00′59″N, 124°08′15″W, thence easterly following the toe of the South Jetty to 44°00′54″N, 124°08′01″W, thence southwesterly to 44°00′49″N, 124°08′06″W, thence southerly to 44°00′00″N, 124°08′06″W, thence southerly following 25 ft. east of road to 43°57′23″N, 124°08′27″W, thence southerly to 43°52′55″N, 124°09′10″W, thence southeasterly to 43°52′46″N, 124°08′58″W, thence southerly to 43°52′38″N, 124°08′58″W, thence west to MLW, thence southerly and westerly following MLW around the southern end of the spit, thence northerly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Mercer Lake, Goose Pasture, and Tahkenitch Creek USGS 7.5″ Quads 1984)



OR–3 SIUSLAW RIVER
TO SILTCOOS RIVER

OR–4. Siltcoos River to Threemile Creek, Lane and Douglas County (Index Map 1)

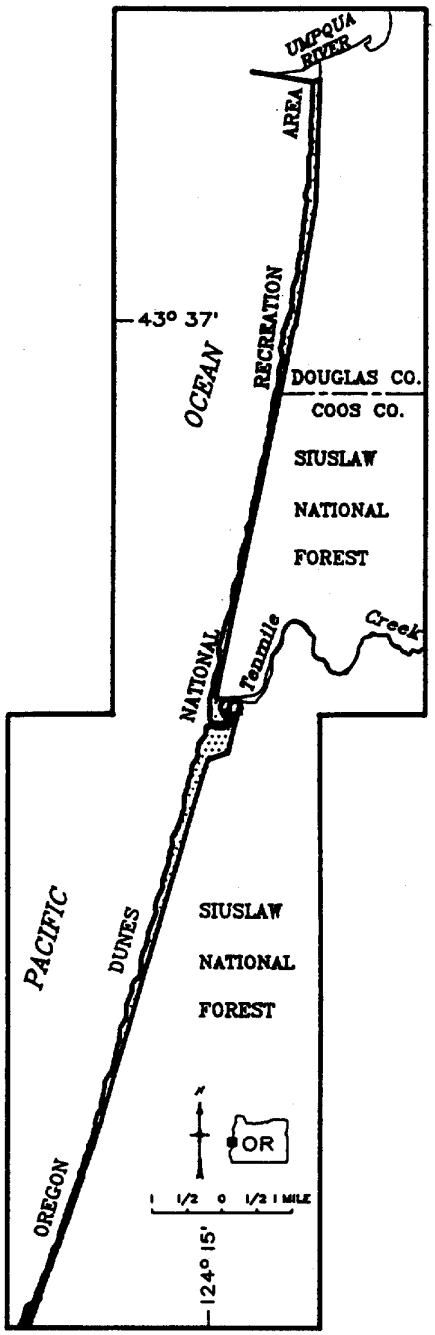
Beginning at 43°52′29″N, 124°08′55″W, thence southwesterly to 43°52′13″N, 124°09′11″W, thence westerly to 43°52′12″N, 124°09′18″W, thence southerly to 43°49′02″N, 124°09′52″W, thence east to 43°49′02″N, 124°09′43″W, thence southerly to 43°47′08″N, 124°10′04″W, thence southwesterly to 43°47′00″N, 124°10′16N′W, thence southerly to 43°45′00″N, 124°10′42″W, thence west to MLW, thence northerly following MLW to a point directly north of the point of beginning, thence south to the point of beginning. (Goose Pasture and Tahkenitch Creek USGS 7.5″ Quad 1984)



OR–4 SILTCOOS RIVER
TO THREEMILE CREEK

OR–5. Umpqua River to Horsfall Beach, Douglas and Coos County (Index Map 1)

Beginning at 43°3951 N, 124°1225 W, thence southerly to 43°3936 N, 124°1225 W, thence southerly to 43°3840 N, 124°1229 W, thence southerly following 25 ft. east of road to 43°3730 N, 124°1246 W, thence southwesterly to 43°3439 N, 124°1334 W, thence southwesterly to 43°3400 N, 124°1346 W, thence easterly to 43°3358 N, 124°1326 W, thence southwesterly to 43°3329 N, 124°1337 W, thence westerly to 43° 3326 N, 124°1353 W, thence southwesterly following 20 ft. contour to 43°3000 N, 124°1516 W, thence southwesterly to 43°2708 N, 124°1636 W, thence west to MLW, thence northeasterly following MLW to the southern toe of South Jetty, thence northeast to the point of beginning. (Winchester Bay and Lakeside USGS 7.5 Quads 1985, and Empire USGS 7.5'' Quad 1970)



OR–5 UMPQUA RIVER
TO HORSFALL BEACH

OR–6. Horsfall Beach to Coos Bay, Coos County (Index Map 1)

Unit 1

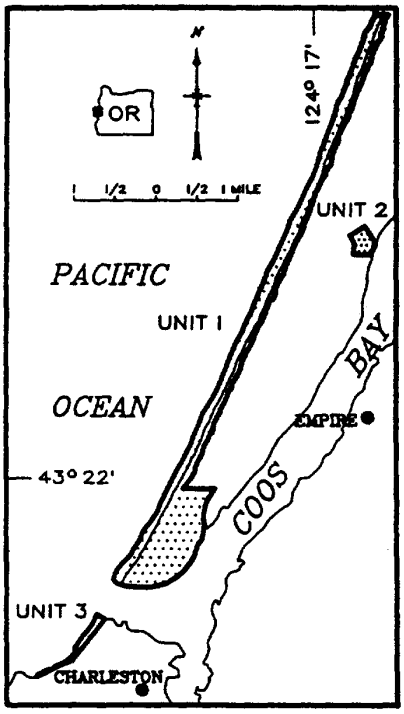
Beginning at 43°2708 N, 124°1636 W, thence southwesterly following 20 ft. contour to 43°2534 N, 124°1727 W, thence southwesterly following 20 ft. contour to 43°2223 N, 124°1925 W, thence east to MLW, thence southerly and westerly following MLW around the southern tip of the north spit, thence northeasterly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Empire and Charleston USGS 7.5'' Quads 1970)

Unit 2

Beginning at 43°2502 N, 124°1612 W, thence southeasterly to 43°2451 N, 124°1618 W, thence east to MLW, thence southerly following MLW to a point directly east of 43°2444 N, 124°1618 W, thence west to said point, thence westerly to 43°2444 N, 124°1701 W, thence northeasterly to 43°24 57 N, 124°1700 W, thence northwesterly to 43°2454 N, 124°1704 W, thence northeasterly to the point of beginning. (Empire USGS 7.5'' Quad 1970)

Unit 3

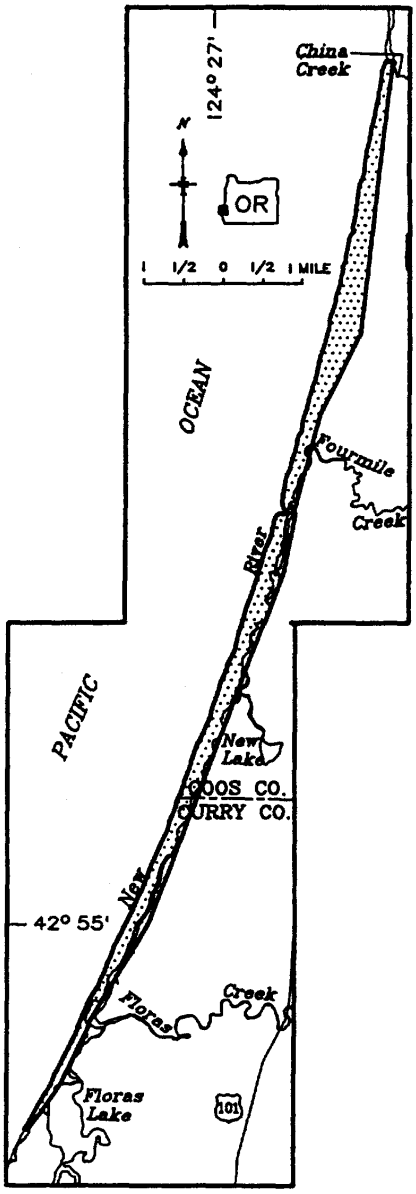
Beginning at 43°2105 N, 124°2026 W, thence southwesterly to 43°2039 N, 124°2054 W, thence southwesterly to 43°2121 N, 124°2121 W, thence north to MLW, thence northeasterly following MLW to the southern toe of the South Jetty, thence easterly following the toe of the South Jetty to the point of beginning. (Charleston USGS 7.5'' Quad 1970)



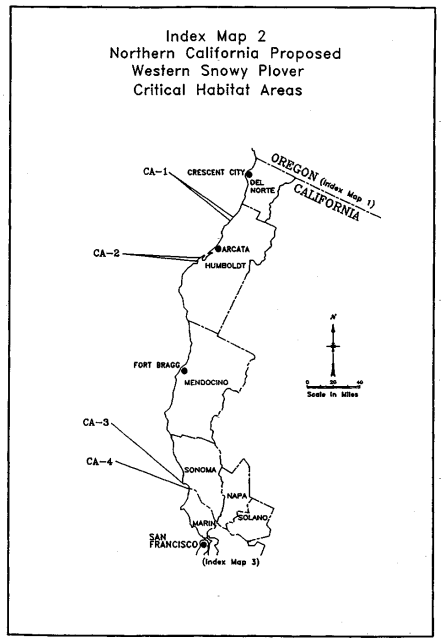
OR–6 HORSFALL BEACH
TO COOS BAY UNITS 1–3

OR–7. Bandon Park to Floras Lake, Coos and Curry Counties (Index Map 1)

Beginning at 43°04′14″N, 124°26′01″W, thence southerly to 43°03′22″N, 124°26′10″W, thence southerly to 43°02′42″N, 124°26′16″W, thence southerly to 43°01′42″N, 124°26′26″W, thence southwesterly to 43°00′56″N, 124°26′58″W, thence southwesterly to 43°00′00″N, 124°27′17″W, thence southerly to 42°59′27″N, 124°27′25″W, thence southwesterly to 42°57′16″N, 124°28′24″W, thence southwesterly to 42°55′52″N, 124°29′09″W, thence southwesterly to 42°54′48″N, 124°30′00″W, thence southwesterly to 42°54′10″N, 124°30′22″W, thence southwesterly to 42°53′42″N, 124°30′49″W, thence west to MLW, thence northeasterly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Floras Lake and Langlois USGS 7.5″ Quads 1986, and Bandon USGS 7.5″ Quad 1970)



OR–7 BANDON
TO FLORAS LAKE



California. Areas of land and water as follows:

CA–1. Humboldt Coast Lagoon Beaches, Humboldt County (Index Map 2)

Unit 1—Stone Lagoon

Beginning at 41°15′33″N, 124°05′54″W, thence south and east following the west side of the access road to Dry Lagoon State Park to 41°15′29″N, 124°05′49″W, thence southwesterly following the high water line of Stone Lagoon to 41°14′42″N, 124°06′08″W, thence southwesterly to 41°14′40″N, 124°06′10″W, thence southwesterly following the 40-foot contour line to 41°14′14″N, 124°06′21″W, thence west to MLW, thence northeasterly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Orick and Rodgers Peak USGS 7.5″ Quads 1966)

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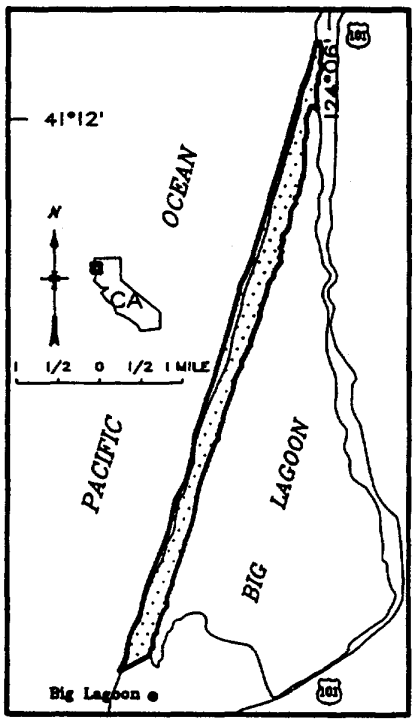
Unit 2—Big Lagoon

Beginning at 41°13′00″N, 124°06′39″W, thence southerly following the 40-foot contour line to 41°12′47″N, 124°06′40″W, thence southerly following the Big Lagoon State Park property line to 41°12′39″N, 124°06′40‴W, thence northwesterly and southwesterly following the high water line of Big Lagoon to 41°09′54″N, 124°07′49″W, thence southwesterly following the Big Lagoon State Park property line to 41°09′49″N, 124°08′00″W, thence west to MLW, thence northeasterly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Rodgers Peak USGS 7.5″ Quad 1966 and Trinidad USGS 7.5″ Quad 1978)

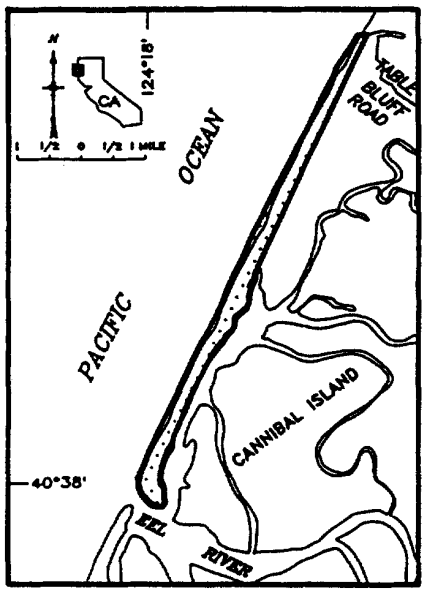


CA–1 HUMBOLDT COAST
LAGOON BEACHES
UNIT 2– BIG LAGOON

CA–2. Eel River Beaches, Humboldt County (Index Map 2)

Unit 1—Eel River North

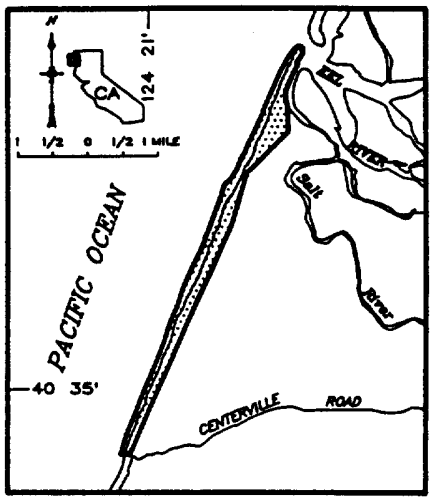
Beginning at 40°41′51″N, 124°16′27″W, thence southwesterly to 40°40′11″N, 124°17′30″W, thence south to MLW, thence southerly following MLW around the south end of the split, thence north following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Cannibal Island USGS 7.5″ Quad 1972)



CA–2 EEL RIVER BEACHES
UNIT 1– EEL RIVER NORTH

Unit 2—Eel River South

Beginning at 40°34′29″N, 124°21′01″W, thence west to MLW, thence northeasterly following MLW to a point directly west of 40°38′28″N, 124°18′42″W, thence east to said point, thence east to MHW of the left bank of the Eel and Salt Rivers, thence southwesterly following MHW of the left bank of the Salt River to 40°37′54″N, 124°18′52″W, thence southerly to 40°37′38″N, 124°18′53″W, thence southwesterly to 40°37′14″N, 124°19′25″W, thence southwesterly to 40°36′44″N, 124°19′36″W, thence southwesterly to 40°34′29″N, 124°20′56″W, thence westerly to the point of beginning. (Cannibal Island and Ferndale USGS 7.5″ Quads 1972)



CA–2 EEL RIVER BEACHES
UNIT 2– EEL RIVER SOUTH

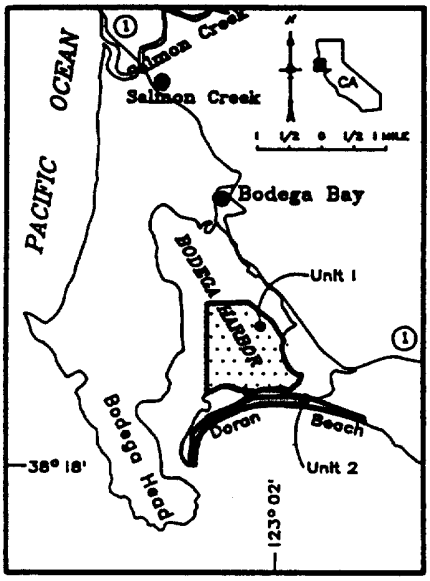
CA–3. Bodega Bay, Sonoma County (Index Map 2)

Unit 1—Bodega Harbor

Beginning at 38°18′51″N, 123°03′02″W, at MHW on Doran Spit, thence north to 38°19′30″N, 123°03′02″W, thence east to 38°19′30″N, 123°02′38″W, thence southeasterly to 38°19′22″N, 123°02′26″W, thence southerly to 38°19′13″N, 123°02′20″W, on the MHW line of Bodega Harbor, thence southerly and westerly following MHW to the point of beginning. (Bodega Head USGS 7.5″ Quad 1972)

Unit 2—Doran Beach

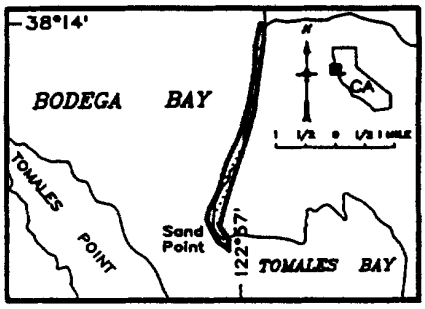
Beginning at 38°18′22″ N, 123°03′09″W, at the west end of the North Jetty, thence east to MLW, thence northerly and easterly following MLW to a point directly south of 38°18′44″N, 123°01′36″W, thence north to said point, thence northwesterly to 38°18′52″N, 123°02′07″W, thence westerly to 38°18′51″N, 123°02′34″W, thence southwesterly to 38°18′42″N, 123°03′01″W, thence southwesterly to 38°18′34″N, 123°03′08″W, thence southerly to the point of beginning. (Bodega Head USGS 7.5″ Quad 1972)



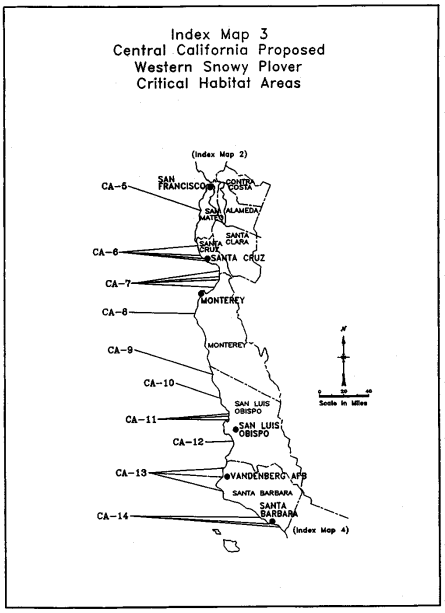
CA–3 BODEGA BAY
UNITS 1– 2

CA–4. Dillon Beach, Marin County (Index Map 2)

Beginning at 38°14′57″N, 122°57′58″W, thence southerly to 38°14′31″N, 122°58′01″W, thence southwesterly to 38°13′57″N, 122°58′15″W, thence southeasterly to 38°13′21″N, 122°58′12″W, thence south to MLW, thence northwesterly and northerly to a point directly west of the point of beginning, thence east to the point of beginning. (Tomales USGS 7.5″ Quad 1971)

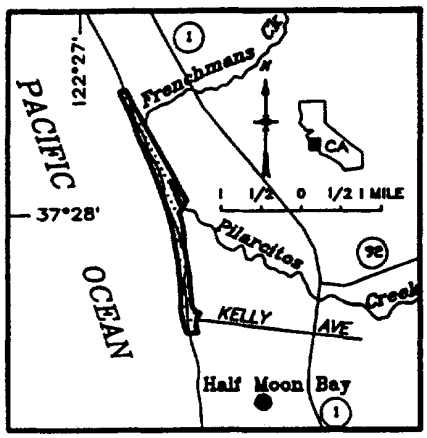


CA–4 DILLON BEACH



CA–5. Half Moon Bay Beaches, San Mateo County (Index Map 3)

Beginning at 37°28′57″N, 122°27′06″W, thence southeasterly to 37°28′26″N, 122°26′45″W, thence southwesterly to 37°28′24″N, 122°26′47″W, thence southerly following the 20-foot contour line to 37°27′49″N, 122°26′40″W, thence west to MLW, thence northwesterly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Half Moon Bay USGS 7.5″ Quad 1973)

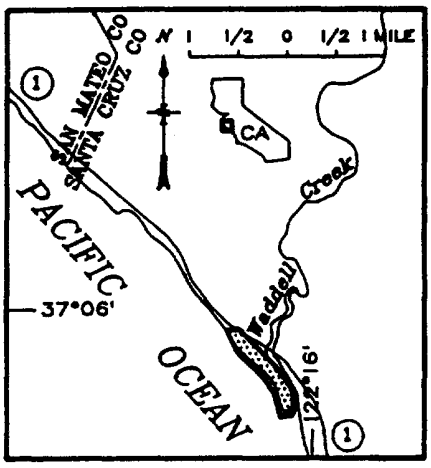


CA–5 HALF MOON BAY BEACHES

CA–6. Santa Cruz Coast Beaches, Santa Cruz County (Index Map 3)

Unit 1—Waddell Creek Beach

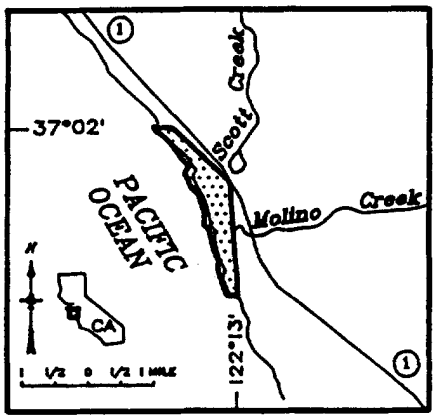
Beginning at 37°05′35″N, 122°16′32″W, thence west to MLW, thence northwesterly following MLW to a point west of 37°05′52″N, 122°16′32″W, thence east to said point, thence southeasterly to MHW line of Waddell Creek 37°05′41″N, 122°16′34″W, thence south to point of beginning. (Ano Nuevo USGS 7.5″ Quad 1968)



CA–6 SANTA CRUZ COAST BEACHES
UNIT 1– WADDELL CREEK BEACH

Unit 2—Scott Creek Beach

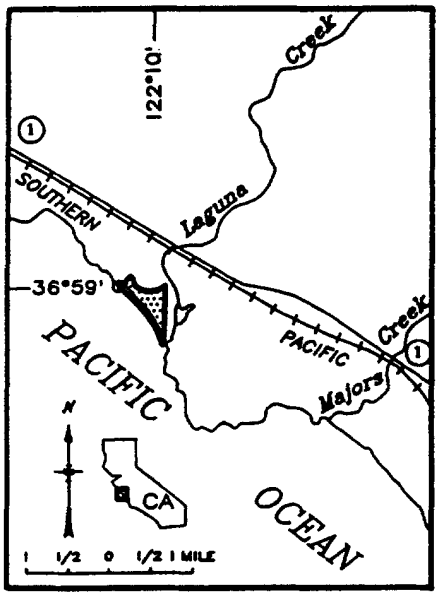
Beginning at 37°02′33″N, 122°13′53″W, located at northwest end of beach, thence southeasterly to 37°02′22″N, 122°13′36″W, located west of Highway 1 and excluding the existing Highway 1 ROW, thence south to 37°01′58″N, 122°13′34″W, located at south end of beach on 60 foot contour line, thence west to MLW, thence northwesterly following MLW to a point directly west of point of beginning, thence east to point of beginning. (Davenport USGS 7.5″ Quad 1968)



CA–6 SANTA CRUZ COAST BEACHES
UNIT 2– SCOTT CREEK BEACH

Unit 3—Laguna Creek Beach

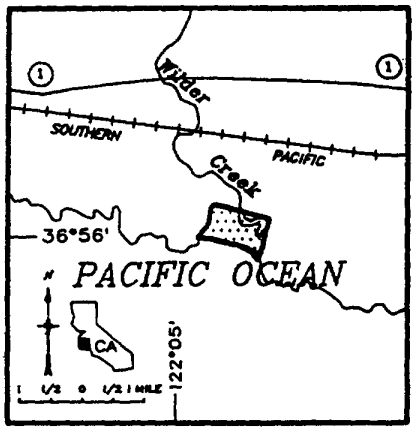
Beginning at 36°59′04″N, 122°09′26″W, located at northwest end of beach on 20 foot contour line, thence east following 20 foot contour line to 36°59′03″N, 122°09′14″W, located at Laguna Creek at a point 800 feet south of Highway 1, thence south to MLW, thence northwesterly following MLW to a point directly south of point of beginning, thence north to point of beginning. (Santa Cruz USGS 7.5″ Quad 1981)



CA–6 SANTA CRUZ COAST BEACHES
UNIT 3– LAGUNA CREEK BEACH

Unit 4—Wilder Creek Beach

Beginning at 36°57′17″N, 122°04′43″W, located at northwest end of upper beach on 40 foot contour line, thence southwesterly to 36°57′16″N, 122°04′29″W, located at northeast end of upper beach east of 40 foot contour line, thence south to MLW, thence northwesterly following MLW to 40 foot contour line at west end of beach, thence north following 40 foot contour line to point of beginning. (Santa Cruz USGS 7.5″ Quad 1981)

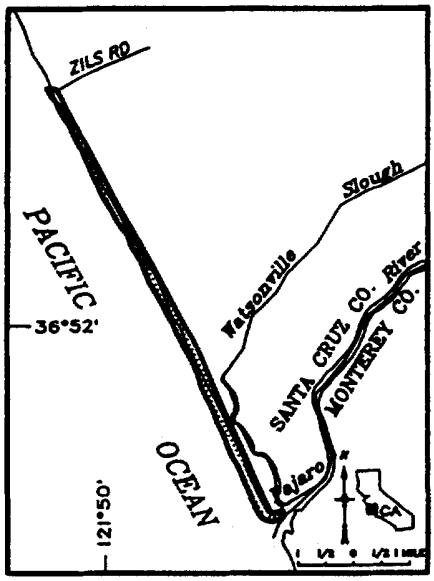


CA–6 SANTA CRUZ COAST BEACHES
UNIT 4– WILDER CREEK BEACH

CA–7. **Monterey Bay Beaches, Santa Cruz and Monterey Counties (Index Map 3)**

Unit 1—Sunset Beach

Beginning at 36°54′38″N, 121°50′50″W, located west of Zils Road, thence southeasterly to 36°51′25″N, 121°48′13″W, thence east along north bank of Pajaro River to 36°51′27″N, 121°48′30″W, located south of mouth of Watson Slough, thence south to MLW, thence southerly following MLW around south end of beach, thence northwesterly following MLW to a point west of point of beginning, thence east to point of beginning. (Watsonville West and Moss Landing USGS 7.5″ Quad 1980)



CA–7 MONTEREY BAY BEACHES
UNIT 1– SUNSET BEACH

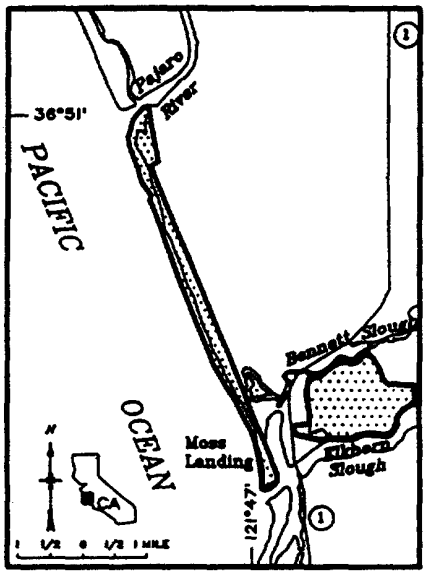
Unit 2—Mudowski Beach

Beginning at 36°49″25″ N, 121°48′21″ W, thence southerly to 36°50′58″ N, 121°48′15″ W, located north of the 10 foot contour line and west of Jensen Road, thence southwesterly to 36°51′11″ N, 121°48′20″ W, thence southeasterly to 36°50′43″ N, 121°47′15″ W, located east of seawall, thence south to MLW, thence southwesterly following MLW around south end of beach, thence northwesterly following MLW to north end of beach, thence northeasterly following MLW around north end of beach to a point north of point of beginning, thence south to point of beginning. (Moss Landing USGS 7.5″ Quad 1980)

Unit 3—Elkhorn Slough Mud Flat/Salt Pond

Beginning at north bank of Elkhorn Slough 36°48′49″ N, 121°46′12″ W, thence west following south perimeter of mud flat and salt pond to 36°48′50″ N, 121°47′02″ W, which excludes the existing Highway 1 ROW, thence north following west perimeter of the salt pond, thence east following northern perimeter of salt pond to west perimeter of mud flat, thence north following west perimeter of mud flat to 36°49′14″ N, 121°46′55″ W, located on south shore of Bennett Slough, thence northeasterly following south bank of Bennett Slough to 36°49′24″ N, 121°46′22″ W, located at the northern most point of mud flat, thence southeasterly following the east perimeter of the mud flat to 36°49′12″ N, 121°46′12″ W, thence easterly following the perimeter of the mud flat to 36°49′59″ N, 121°45′59″ W, thence south following east perimeter of mud flat to 36°49′04″ N, 121°45′58″ W, thence

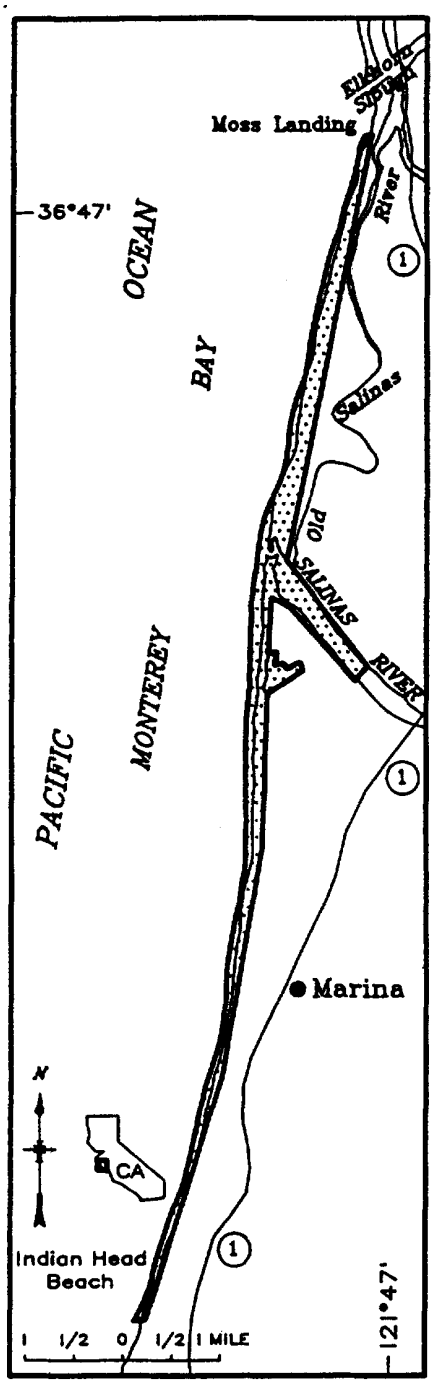
southwesterly along northern shore of Elkhorn Slough to point of beginning. (Moss Landing USGS 7.5″ Quad 1980)



CA–7 MONTEREY BAY BEACHES
UNIT 2– MUDOWSKI BEACH
UNIT 3– ELKHORN SLOUGH
MUDFLAT/SALTPOND

Unit 4—Salinas River Beach

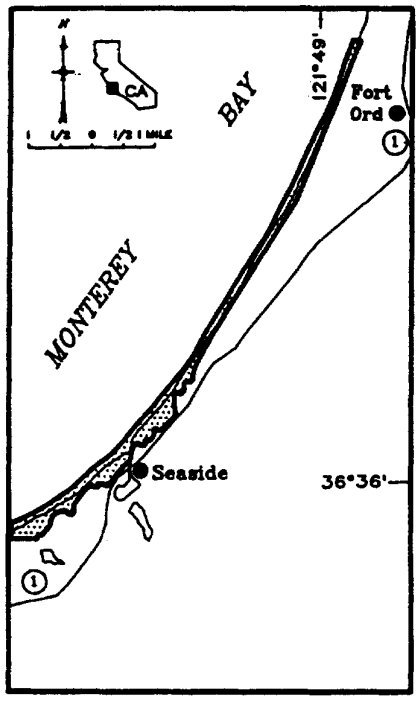
Beginning at 36°48′01″ N, 121°47′18″ W, located south of boat launch, thence southerly to 36°46′31″ N, 121°47′40″ W, thence southerly to 36°45′00″ N, 121°48′04″ W, located on north bank of Salinas River, thence southeasterly following north bank of Salinas River to 36°44′16″ N, 121°47′20″ W, thence southwesterly across Salinas River to 36°44′10″ N, 121°47′28″ W, located on south bank, thence northwesterly following south bank of Salinas River to 36°44′41″ N, 121°48′02″ W, thence westerly to 36°44′49″ N, 121°48′12″ W, thence south to 36°44′54″ N, 121°48′12″ W, located at northern most point of a large pond, thence southeasterly following north shore of pond to 36°44′44″ N, 121°47′53″ W, thence southwesterly to 36°44′34″ N, 121°48′13″ W, thence southerly to 36°42′59″ N, 121°48′17″ W, thence southerly to 36°41′45″ N, 121°48′49″ W, thence southerly to 36°39′45″ N, 121°49′17″ W, thence west to MLW, thence northerly following MLW to a point west of point of beginning, thence east to point of beginning. Excludes all U.S. Fish and Wildlife Service property. (Moss Landing USGS 7.5″ Quad 1980 and Marina USGS 7.5″ Quad 1983)



CA–7 MONTEREY BAY BEACHES
UNIT 4– SALINAS RIVER BEACH

Unit 5—Fort Ord/Seaside Beaches

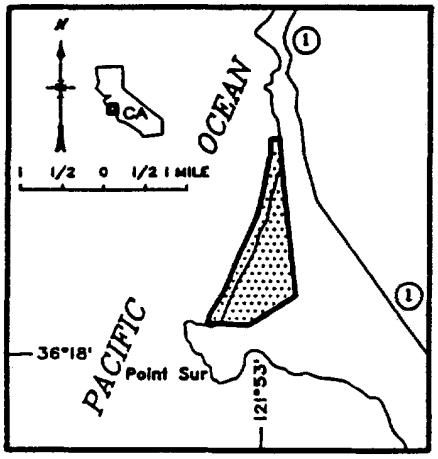
Beginning at 36°39′44″N, 121°49′17″W, located west of beach parking lot, thence southerly following upper beach where it meets toe of bluffs to 36°38′33″N, 121°49′54″W, thence southerly following upper beach where it meets toe of bluffs to 36°36′58″N, 121°51′00″W, thence continue southwesterly following upper portion of beach where it meets toe of bluffs and sand dunes to 36°36′06″N, 121°52′15″W, thence west to 36°36′06″N, 121°52′30″W, thence north to MLW, thence northeasterly following MLW to a point west of point of beginning, thence east to point of beginning. (Marina USGS 7.5″ Quad 1983 and Seaside USGS 7.5″ Quad 1968)



CA–7 MONTEREY BAY BEACHES
UNIT 5– FORT ORD/SEASIDE BEACHES

CA–8. Point Sur Beach, Monterey County (Index Map 3)

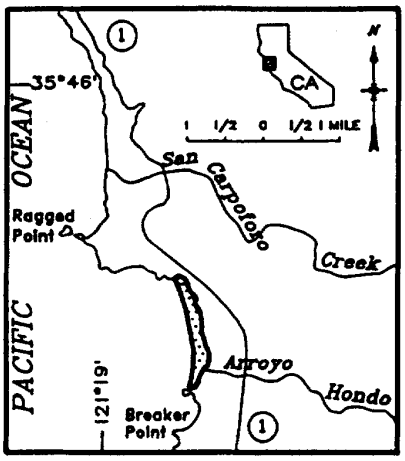
Beginning at 36°19′11″N, 121°53′39″W, located at north end of beach, thence south to 36°18′31″N, 121°53′32″W, located north of Lighthouse Road, thence southwesterly following a line north of Lighthouse Road to 36°18′37″N, 121°53′46″W, thence west to MLW, thence northeasterly following MLW to a point west of point of beginning, thence east to point of beginning. (Point Sur USGS 7.5″ Quad 1983)



CA–8 POINT SUR BEACH

CA–9. Arroyo Hondo Creek Beach, San Luis Obispo County (Index Map 3)

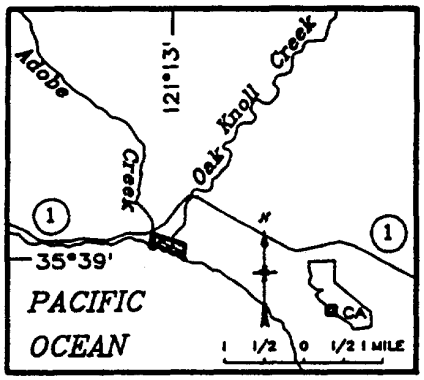
Beginning at 35°45′23″N, 121°19′02″W, thence southerly following the 20-foot contour line to 35°45′00″N, 121°18′52″W, thence southeasterly to 35°44′54″N, 121°18′55″W, thence west to MLW, thence northerly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Burro Mountain USGS 7.5″ Quad 1972 and Piedras Blancas USGS 7.5″ Quad 1959)



CA–9 ARROYO HONDO CREEK BEACH

CA–10. Arroyo Laguna Creek Beach, San Luis Obispo County (Index Map 3)

Beginning at 35°39′08″N, 121°13′15″W, located south of Highway 1 and excluding the existing Highway 1 ROW, thence southeasterly to 35°39′05″N, 121°13′17″W, thence south to MLW, thence westerly following MLW to a point south of point of beginning, thence north to point of beginning. (San Simeon USGS 7.5″ Quad 1958)

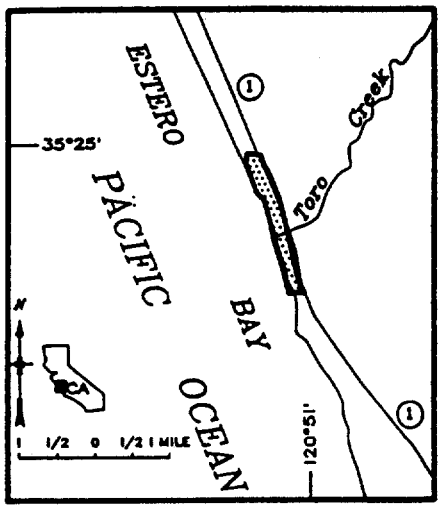


CA–10 ARROYO LAGUNA CREEK BEACH

CA–11. Morro Bay Beaches, San Luis Obispo County (Index Map 3)

Unit 1—Toro Creek

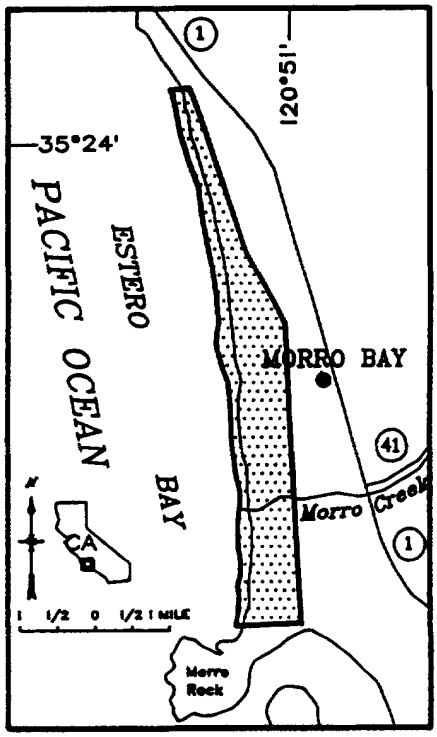
Beginning at 35°24′57″ N, 120°52′27″ W, located west of Highway 1 and excluding the existing Highway 1 ROW, thence southerly along a line west of Highway 1, excluding the existing Highway 1 ROW, to 35°24′30″N, 120°52′14″W, thence west to MLW, thence northwesterly following MLW to a point west of point of beginning, thence east to point of beginning. (Morro Bay North USGS 7.5″ Quad 1965)



CA–11 MORRO BAY BEACHES
UNIT 1– TORO CREEK BEACH

Unit 2—Atascadero Beach

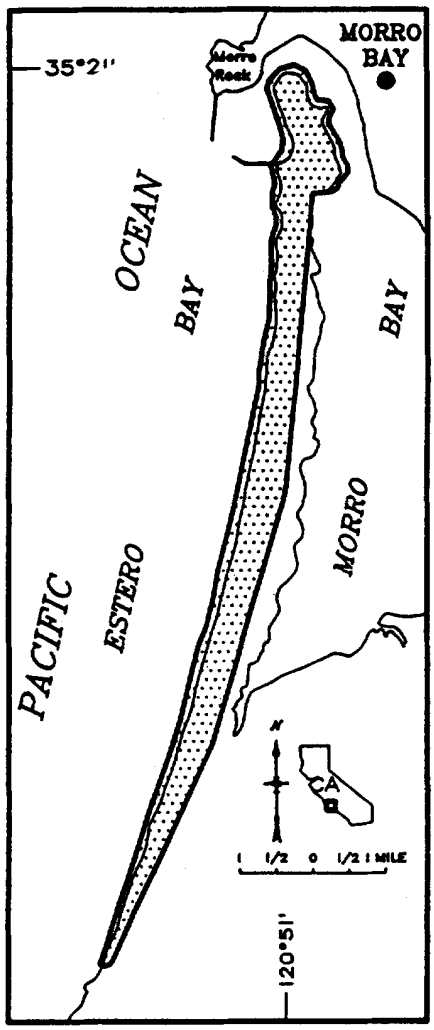
Beginning at 35°24′13″N, 120°52′02″W, located west of Beachcomber Drive, thence southeasterly along upper beach to 35°23′38″N, 120°51′48″W, located west of Sandalwood Avenue, thence south to 35°23′24″N, 120°51′39″W, thence south to 35°22′22″N, 120°51′31″W, located at the southwest end of powerplant, thence west to MLW, thence northerly following MLW to a point west of point of beginning, thence east to point of beginning. (Morro Bay North and Morro Bay South USGS 7.5″ Quads 1965)



CA–11 MORRO BAY BEACHES
UNIT 2– ATASCADERO BEACH

Unit 3—Morro Bay Beach

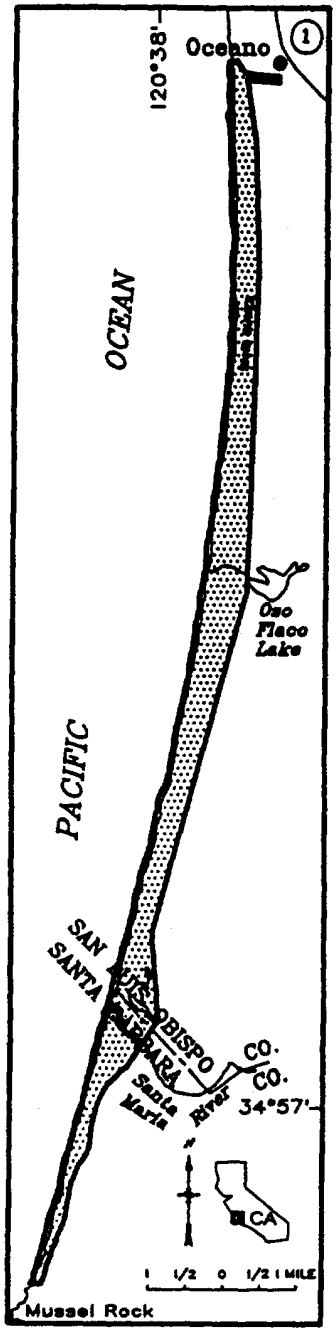
Beginning at 35°17′28″N, 120°52′46″W, located at south end of beach, thence west to MLW, thence northeasterly following MLW to breakwater, thence from breakwater following MLW clockwise around northern end of peninsula to a point east of 35°21′28″N, 120°51′28″W, thence west to said point, thence southwesterly to 35°19′54″N, 120°51′38″W, thence southwesterly to 35°18′38″N, 120°52′06″W, thence southwesterly to point of beginning. (Morro Bay South USGS 7.5″ Quad 1978)



CA–11 MORRO BAY BEACHES
UNIT 3– MORRO BAY BEACH

CA–12. Pismo Beach/Nipomo Dunes, San Luis Obispo and Santa Barbara Counties (Index Map 3)

Beginning at 34°53′02″N, 120°39′40″W, located northeast of Mussel Point, thence west to MLW, thence northerly following MLW to a point west of 35°06′06″N, 120°37′45″W, thence east to said point, thence southeasterly to 35°06′01″N, 120°37′40″W, located on north bank of Arroyo Grande Creek, thence easterly following north bank of Arroyo Grande Creek to 35°05′58″N, 120°37′19″W, thence southerly across Arroyo Grande Creek to 35°05′56″N, 120°37′18″W, thence westerly to 35°05′58″N, 120°37′38″W, thence southeasterly to 35°05′27″N, 120°37′32″W, thence southerly to 35°04′27″N, 120°37′30″W, thence southwesterly to 35°02′32″N, 120°37′35″W, thence south to 35°01′42″N, 120°37′35″W, thence southwesterly to 34°58′53″N, 120°39′02″W, thence southeasterly across Guadalupe oil field to 34°58′10″N, 120°38′27″W, located at east end of a pond north of Santa Maria River, thence southwesterly to a point on 40-foot contour line 34°57′45″N, 120°38′59″W, located south of the Santa Maria River, thence southwesterly along the 40-foot contour line to point of beginning. (Oceano USGS 7.5″ Quad 1979 and Point Sal USGS 7.5″ Quad 1974)

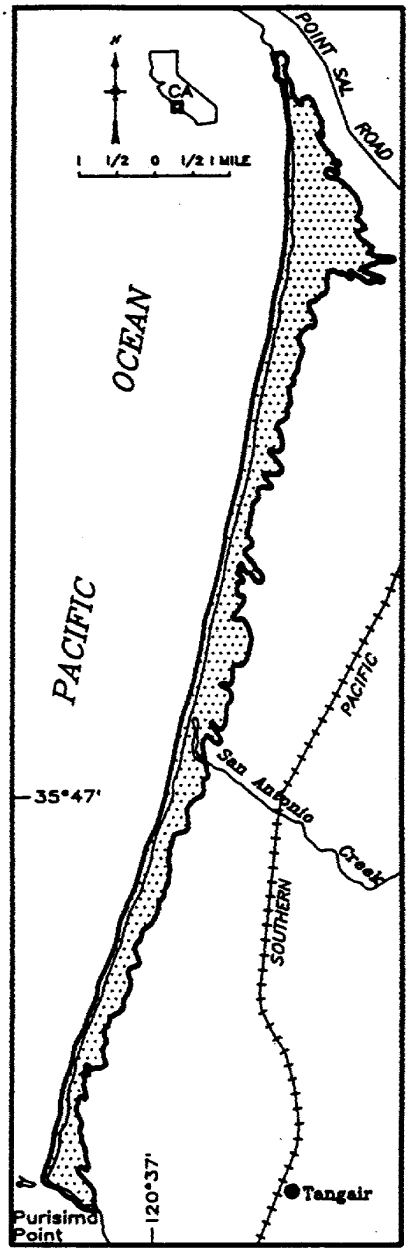


CA–12 PISMO BEACH/NIPOMO DUNES

CA–13. Point Sal to Point Conception Beaches, Santa Barbara County (Index Map 3)

Unit 1—Vandenberg Beach

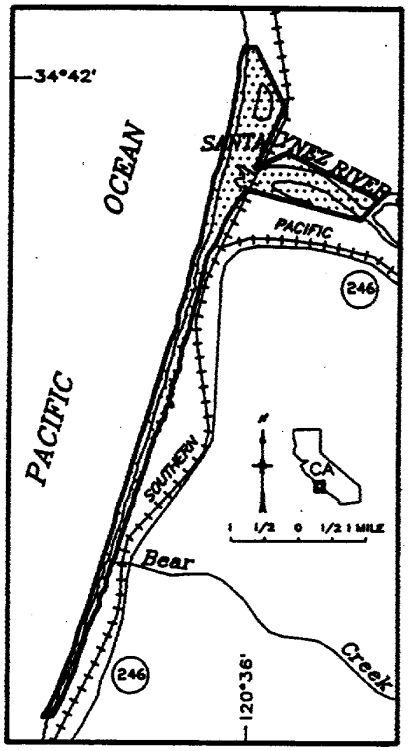
Beginning at 35°51′41″N, 120°36′36″W, located on 40-foot contour line, thence southerly along 40-foot contour line to 34°45′22″N, 120°37′50″W, located southeast of Purisma Point, thence south to MLW, thence northwesterly following MLW around Purisma Point, thence north following MLW to a point west of point of beginning, thence east to point of beginning. (Casmalia USGS 7.5″ Quad 1982)



CA–13 POINT SAL TO POINT CONCEPTION
UNIT 1– VANDENBERG BEACH

Unit 2—Santa Ynez River Mouth/Ocean Beach

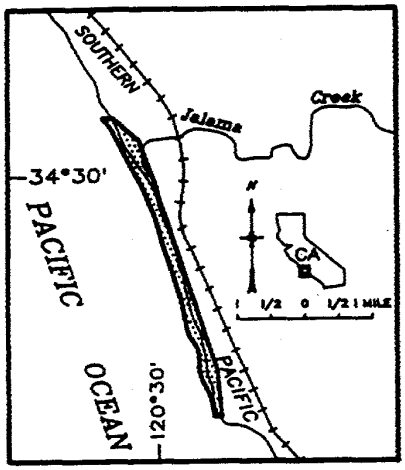
Beginning at 34°42′16″N, 120°35′54″W, located west of beach access road, thence southeasterly to 34°41′56″N, 120°35′45″W, located west of railroad tracks, thence southwesterly to 34°41′35″N, 120°35′55″W, located on north bank of Santa Ynez River, thence northeasterly to 34°41′41″N, 120°35′43″W, thence southeasterly along north bank of Santa Ynez River to 34°41′24″N, 120°35′05″W, located at end of Gravel Pit Road, thence southwesterly to 34°41′18″N, 120°35′13″W, located on south bank of Santa Ynez River, thence west across railroad tracks to 34°41′27″N, 120°35′58″W, located on 40-foot contour line, thence southwesterly along 40-foot contour line to 34°37′28″N, 120°37′16″W, located 400 feet west of railroad tracks, thence west to MLW, thence northeasterly following MLW to a point west of point of beginning, thence east to point of beginning. (Surf USGS 7.5″ Quad 1974)



CA–13 POINT SAL TO POINT CONCEPTION
UNIT 2– SANTA YNEZ RIVER MOUTH/
OCEAN BEACH

Unit 3—Jalama Beach

Beginning at 34° 30′ 48″ N, 120° 30′ 12″ W, thence southeasterly to 34° 30′ 44″ N, 120° 30′ 04″ W, located at northern end of Jalama Beach Lagoon, thence southeasterly to 34° 30′ 23″ N, 120° 29′ 55″ W, thence southeasterly to 34° 29′ 53″ N, 120° 29′ 44″ W, thence southeasterly to 34° 29′ 43″ N, 120° 29′ 42″ W, thence west to MLW, thence northwesterly following MLW to a point west of point of beginning, thence east to point of beginning. (Tranquillon Mountain USGS 7.5″ Quad 1959, Lompoc Hills USGS 7.5'' Quad 1971, and Point Conception USGS 7.5'' Quad 1974)

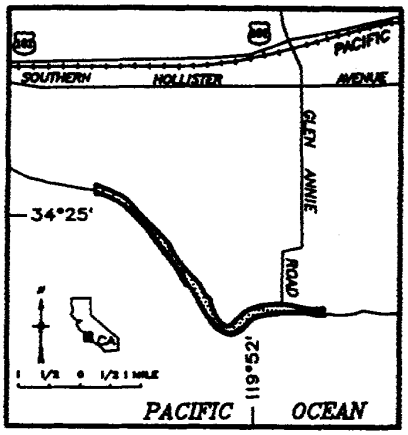


CA–13 POINT SAL
TO POINT CONCEPTION
UNIT 3– JALAMA BEACH

CA–14. Santa Barbara Coast Beaches, Santa Barbara County (Index Map 3)

Unit 1—Devereaux Beach

Beginning at 34° 25′ 13″ N, 119° 53′ 31″ W, located on 20 foot contour line, thence southeasterly following 20-foot contour line, thence northeasterly around Coal Oil Point to 34° 24′ 33″ N, 119° 51′ 57″ W, located on 20 foot contour line, thence south to MLW, thence westerly following MLW, southwesterly around Coal Oil Point, thence northwesterly to a point south of point of beginning, thence north to point of beginning. (Dos Pueblos Canyon and Goleta USGS 7.5'' 3 Quad 1988)



CA–14 SANTA BARBARA COAST BEACHES
UNIT 1– DEVEREAUX BEACH

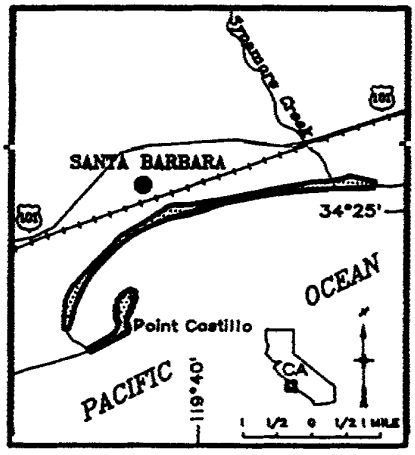
Unit 2—Point Castillo/ Santa Barbara Harbor Beach

Point Castillo

Beginning (breakwater and sandspit) at 34°24′17″ N, 119°41′13″ W, located at Beacon, thence south to MLW, thence southwesterly following MLW on outside of breakwater to Point Castillo, thence northeasterly following MLW inside of breakwater to southwest end of sandspit, thence circle sandspit clockwise following MLW to a point south of point of beginning, thence north to point of beginning. (Santa Barbara USGS 7.5″ Quad 1967)

Santa Barbara Harbor Beach

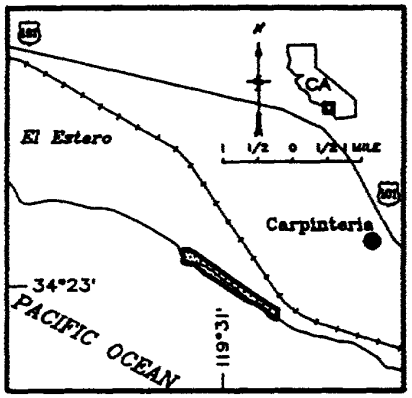
Beginning at 34°24′16″ N, 119°41′37″ W, located at southwest end of beach, thence northeasterly following a line south of Cabrillo Blvd. to 34°22′09″ N, 119°38′22″ W, located on west side of Stearns Wharf, thence northeasterly to 34°24′54″ N, 119°40′52″ W, thence easterly following a line just south of Cabrillo Blvd. to 34°25′03″ N, 119°39′50″ W, thence southeasterly to 34°25′00″ N, 119°38′01″ W, thence south to MLW, thence southwesterly following MLW to a point east of point of beginning, thence west to point of beginning. (Santa Barbara USGS 7.5″ Quad 1967)



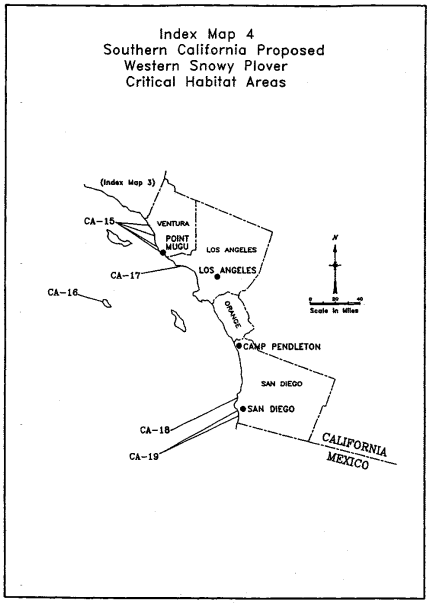
CA–14 SANTA BARBARA COAST BEACH
UNIT 2– POINT CASTILLO/
SANTA BARBARA HARBOR BEACH

Unit 3—Carpinteria Beach

Beginning at 34°23′38″ N, 119°31′26″ W, located at end of Linden St. on northwest end of beach, thence southeasterly to 34°23′22″ N, 119°31′02″ W, located at southeast end of the beach, thence south to MLW, thence northwesterly following MLW to a point south of point of beginning, thence north to point of beginning. (Carpinteria USGS 7.5″ Quad 1988)



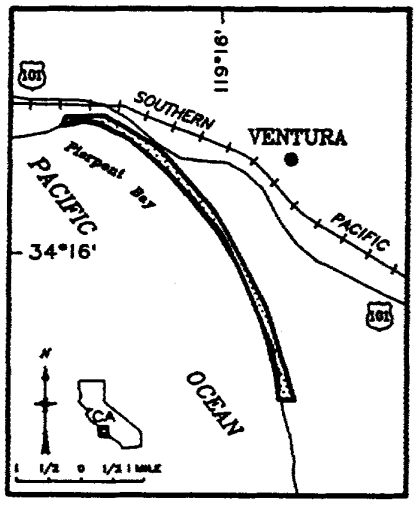
CA–14 SANTA BARBARA COAST BEACHES
UNIT 3– CARPINTERIA BEACH



CA–15. Oxnard Lowlands, Ventura County (Index Map 4)

Unit 1—San Buena/Ventura Beach

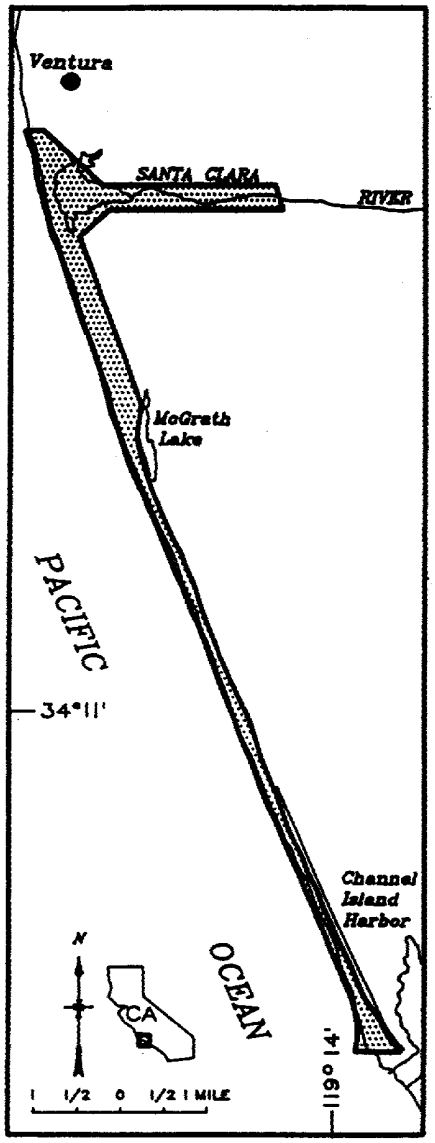
Beginning 34°16′33″ N, 119°17′38″ W, which is located at northwest end of beach, thence east to 34°16′51″ N, 119°17′24″ W, thence southeasterly to 34°16′40″ N, 119°17′03″ W, thence southeasterly to 34°16′15″ N, 119°16′33″ W, thence southeasterly to 34°15′40″ N, 119°16′16″ W, thence southeasterly to 34°15′02″ N, 119°15′52″ W, thence west to MLW, thence northwesterly following MLW to a point south of point of beginning, thence north to point of beginning. (Ventura USGS 7.5″ Quad 1967)



CA–15 OXNARD LOWLANDS
UNIT 1– SAN BUENA/VENTURA BEACH

Unit 2—Mandalay Beach/Santa Clara River Mouth

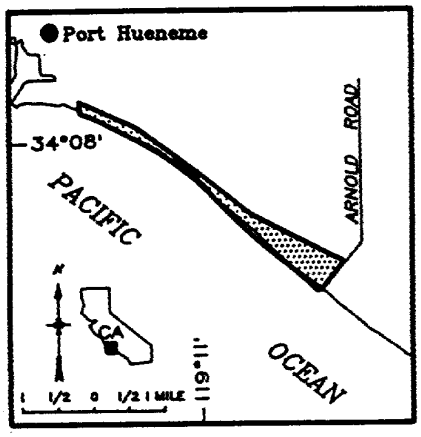
Beginning at 34°14′28″ N, 119°16′12″ W, located at the north end of beach, thence southeasterly to 34°14′10″ N, 119°15′30″ W, located on north bank of Santa Clara River, thence east to 34°14′09″ N, 119°15′57″ W, thence south to 34°14′09″ N, 119°13′57″ W, thence west following south bank of Santa Clara River to 34°14′01″ N, 119°15′30″ W, thence southwesterly to 34°13′53″ N, 119°15′40″ W, located on 15-foot contour line, thence southeasterly to 34°12′58″ N, 119°15′15″ W, located on north end of McGrath Lake, thence southeasterly following 15-foot contour line to 34°09′30″ N, 119°13′28″ W, located on north side of boat ramp, thence west to MLW, thence northwesterly following MLW to a point west of point of beginning, thence east to point of beginning. (Oxnard USGS 7.5″ Quad 1967)



CA–15 OXNARD LOWLANDS
UNIT 2– MANDALAY BEACH/
SANTA CLARA RIVER MOUTH

Unit 3—Ormond Beach

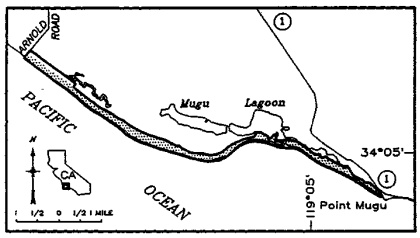
Beginning at 34°08′40″ N, 119°11′58″ W, located east of road to jetty, thence southeasterly to 34°08′49″ N, 119°11′58″ W, thence southeasterly to 34°07′48″ N, 119°10′15″ W, located at northwest end of wetlands, thence southeasterly to 34°07′22″ N, 119°09′19″ W, located on west side of Arnold Road, thence southwest along Arnold Road to 34°07′10″ N, 119°09′32″ W, located at end of Arnold Road, thence west to MLW, thence northwesterly following MLW to a point south of point of beginning, thence north to point of beginning. (Oxnard and Point Mugu USGS 7.5″ Quads 1967)



CA–15 OXNARD LOWLANDS
UNIT 3– ORMOND BEACH

Unit 4—Mugu Lagoon Beach

Beginning at 34°07′15″ N, 119°09′28″ W, thence southeasterly to 34°06′45″ N, 119°08′44″ W, thence southwesterly to 34°06′42″ N, 119°08′47″ W, thence southeasterly to 34°06′31″ N, 119°08′32″ W, thence southeasterly to 34°06′20″ N, 119°08′10″ W, thence southeasterly following 10-foot contour line to 34°06′03″ N, 119°05′44″ W, thence east following the HWL of Mugu Lagoon and crossing the mouth of said lagoon to 34°05′34″ N, 119°04′13″ W, thence southeasterly to 34°05′28″ N, 119°04′08″ W, located on 10 foot contour line, thence southeasterly following 10 foot contour line to 34°05′10″ N, 119°03′38″ W, located on west side of Point Mugu, thence west to MLW, thence northwesterly following MLW, but excluding the mouth of Mugu Lagoon, to a point south of point of beginning, thence north to point of beginning. (Point Mugu USGS 7.5″ Quad 1967)



CA–15 OXNARD LOWLANDS
UNIT 4– MUGU LAGOON BEACH

CA–16. San Nicolas Island Beaches, Ventura County (Index Map 4)

Unit SN–1

Beginning at 33°14′02″ N, 119°26′12″ W, thence east to MLW, thence southeasterly and southwesterly following MLW around east end of Island to a point east of 33°13′27″ N, 119°26′11″ W, thence west to said point, thence north following 25-foot contour line to point of beginning. (San Nicolas Island USGS 7.5″ Quad 1956)

Unit SN–2

Beginning at 33°12′59″ N, 119°28′33″ W, located south of Island Road, thence easterly to 33°12′57″ N, 119°27′59″ W, thence easterly to 33°13′02″ N, 119°27′17″ W, thence easterly to 33°13′10″ N, 119°26′55″ W, thence south to MLW, thence west following MLW to a point south of point of beginning, thence north to point of beginning. (San Nicolas Island USGS 7.5″ Quad 1956)

Unit SN–3

Beginning at 33°13′12″ N, 119°29′36″ W, located south of Island Road, thence easterly to 33°13′ 11″ N, 119°29′09″ W, thence easterly to 33°13′02″ N, 119°28′39″ W, thence south to MLW, thence west following MLW to a point south of point of beginning, thence north to point of beginning. (San Nicolas Island USGS 7.5″ Quad 1956)

Unit SN–4

Beginning at 33°13′18″ N, 119° 30′ 05'' W, thence southeasterly to 33°13′ 10″ N, 119°29′48″ W, thence west to MLW, thence northwesterly to a point south of point of beginning, thence north to point of beginning. (San Nicolas Island USGS 7.5″ Quad 1956)

Unit SN–5

Beginning at 33°13′24″ N, 119°30′25″ W, thence southeasterly to 33°13′17″ N, 119°30′09″ W, thence south to MLW, thence northwesterly following MLW to a point south of point of beginning, thence north to point of beginning. (San Nicolas Island USGS 7.5″ Quad 1956)

Unit SN–6

Beginning at 33°13′47″ N, 119°31′12″ W, thence southeasterly to 33°13′ 36″ N, 119°0′55″ W, thence south to MLW, thence northwesterly following MLW to a point south of point of beginning, thence north to point of beginning. (San Nicolas Island USGS 7.5″ Quad 1956)

Unit SN–7

Beginning at 33°14′10″ N, 119°32′49″ W, thence southeasterly to 33°14′07″ N, 119°32′41″ W, thence southeasterly to 33°14′00″ N, 119°32′38″ W, thence south to MLW, thence northwesterly following MLW to a point south of point of beginning, thence north to point of beginning. (San Nicolas Island USGS 7.5″ Quad 1956)

Unit SN–8

Beach within circle with a radius of 250 feet with center at 33°14′40″ N, 119°33′29″ W. (San Nicolas Island USGS 7.5″ Quad 1956)

Unit SN–9

Beginning at 33°16′22″ N, 119°33′11″ W, thence southwesterly to 33°16′17″ N, 119°33′22″ W, thence southwesterly to 33°16′13″ N, 119°33′43″ W, thence north to MLW, thence northeasterly following MLW to a point north of point of beginning, thence

south to point of beginning. (San Nicolas Island USGS 7.5″ Quad 1956)

Unit SN–10

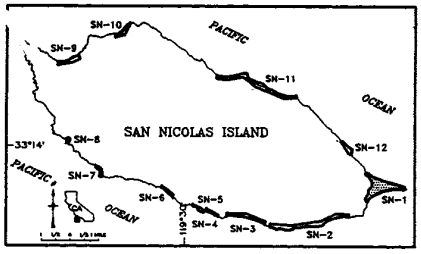
Beginning at 33°17′01″ N, 119°31′58″ W, thence southwesterly to 33°16′51″ N, 119°32′08″ W, thence southwesterly to 33°16′47″ N, 119°32′21″ W, thence north to MLW, thence northeasterly following MLW to a point west of point of beginning, thence east to point of beginning. (San Nicolas Island USGS 7.5″ Quad 1956)

Unit SN–11

Beginning at 33°15′31″ N, 119°27′52″ W, thence westerly to 33°15′32″ N, 119°28′11″ W, thence westerly to 33°15′46″ N, 119°28′55″ W, thence northwesterly to 33°15′59″ N, 119°29′10″ W, thence southwesterly to 33°15′54″ N, 119°29′34″ W, thence northwesterly to 33°15′58″ N, 119°29′52″ W, thence north to MLW, thence easterly following MLW to a point north of point of beginning, thence south to point of beginning. (San Nicolas Island USGS 7.5″ Quad 1956)

Unit SN–12

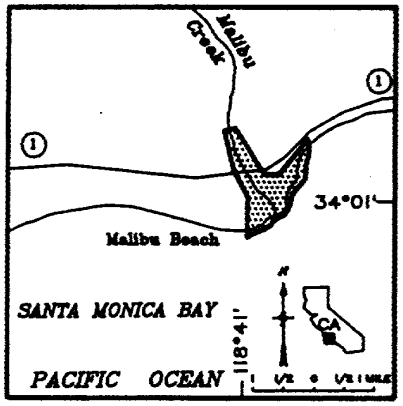
Beginning at 33°14′25″ N, 119°26′35″ W, thence northwesterly to 33°14′40″ N, 119°26′49″ W, thence east to MLW, thence southeasterly following MLW to a point east of point of beginning, thence west to point of beginning. (San Nicolas Island USGS 7.5″ Quad 1956)



CA–16 SAN NICOLAS ISLAND BEACHES
UNITS 1–12

CA–17. Malibu Lagoon, Los Angeles County (Index Map 4)

Beginning at 34°01′58″ N, 118°40′53″ W, thence northwesterly crossing Highway 1, and excluding Highway 1 and the existing ROW north and south of Highway 1, to 34°02′04″ N, 118°40′56″ W, thence northwesterly to 34°02′13″ N, 118°40′59″ W, thence northeasterly to 34°02′14″ N, 118°40′56″ W, thence southeasterly to 34°02′03″ N, 118°40′47″ W, thence east to 34°02′03″ N, 118°40′44″ W, thence northeasterly to 34°02′12″ N, 118°40′37″ W, thence south to MLW, thence southerly and westerly following MLW to a point directly south of the point of beginning, thence north to the point of beginning. (Malibu Beach USGS 7.5″ Quad 1981)



CA–17 MALIBU LAGOON

CA–18. Mission Beach and Bay, San Diego County (Index Map 4)

Unit 1—Fiesta Island

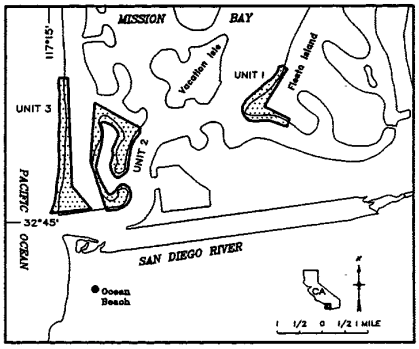
Beginning at 32°46′07″ N, 117°14′34″ W, thence south to MLW, thence southerly and northerly following MLW to a point directly south of 32°45′34″ N, 117°14′50″ W, thence north to said point, thence northwesterly to 32°45′52″ N, 117°14′58″ W, thence northeasterly to 32°46′16″ N, 117°14′55″ W, thence southeasterly to the point of beginning. (La Jolla USGS 7.5″ Quad 1975)

Unit 2—Mariner's Basin

Beginning at 32°46′31″ N, 117°13′25″ W, thence southeasterly to 32°46′30″ N, 117°13′23″ W, thence southwesterly to 32°46′15″ N, 117°13′34″ W, thence southeasterly to 32°46′10″ N, 117°13′23″ W, thence south to MLW, thence westerly and northerly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (La Jolla USGS 7.5″ Quad 1975)

Unit 3—Mission Beach

Beginning at 32°46′26″ N, 117°15′08″ W, thence southerly to 32°46′02″ N, 117°15′06″ W, thence southerly to 32°45′43″ N, 117°15′05″ W, thence southeasterly to 32°45′34″ N, 117°14′57″ W, which is on the north jetty to Mission Bay, thence westerly following the north side of the jetty to MLW, thence northerly following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (La Jolla USGS 7.5″ Quad 1975)

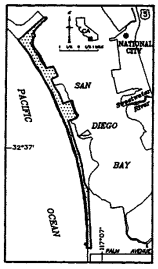


CA–18 MISSION BEACH AND BAY UNITS 1–3

CA–19. South San Diego Coast Beaches, San Diego County (Index Map 4)

Unit 1—Silver Strand/Delta Beach

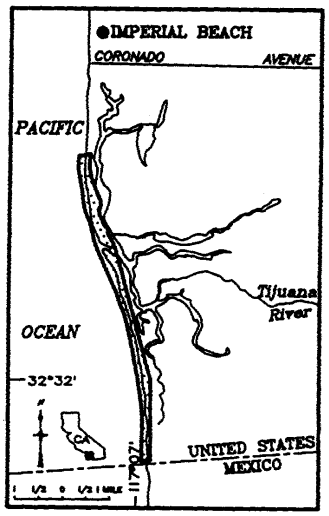
Beginning at 32°40′08″ N, 117°09′54″ W, thence northeasterly to 32°40′40″ N, 117°09′13″ W, thence east to MLW, thence southwesterly following MLW to a point directly north of 32°39′27″ N, 117°09′10″ W, thence south to said point, thence northeasterly to 32°39′30″ N, 117°08′57″ W, thence southeasterly to 32°39′16″ N, 117°08′48″ W, thence southwesterly to 32°39′11″ N, 117°09′00″ W, thence southeasterly following the east side of the San Diego and Arizona Eastern Railroad tracks to 32°38′34″ N, 117°08′40″ W, thence northeasterly to 32°38′39″ N, 117°08′36″ W, thence east to MLW, thence southerly following MLW to a point directly east of 32°38′12″ N, 117°08′26″ W, thence west to said point, thence southwesterly to 32°38′11″ N, 117°08′31″ W, thence southeasterly to 32°37′20″ N, 117°08′10″ W, thence southeasterly following the west side of Silver Strand Boulevard to 32°36′43″ N, 117°08′02″ W, thence southeasterly to 32°36′32″ N, 117°07′55″ W, thence southerly to 32°35′09″ N, 117°07′51″ W, thence west to MLW, thence north following MLW to a point directly west of the point of beginning, thence east to the point of beginning. (Point Loma and Imperial Beach, Calif.—Baja Calif. Norte USGS 7.5″ Quads 1975)



CA–19 SOUTH SAN DIEGO COAST BEACHES
UNIT 1– SILVER STRAND/DELTA BEACH

Unit 2—Tijuana River Beach

Beginning at 32°3401 N, 117°0753 W, thence southerly following the unimproved road to 32°3344 N, 117°0749 W, thence east to the HWL of Oneonta Slough, thence south following the HWL of said slough to 32°3326 N, 117°0740 W, which is at the mouth of Tijuana River, thence southeasterly crossing said river to 32°3236 N, 117°0724 W, thence south to 32°3204 N, 117°0724 W, thence west to MLW, thence northerly following MLW, but excluding the mouth of Tijuana River, to a point directly west of the point of beginning, thence east to the point of the beginning. Excludes all U.S. Fish and Wildlife Service property. (Imperial Beach, Calif.—Baja Calif. Norte USGS 7.5 Quad 1975)



CA–19 SOUTH SAN DIEGO COAST BEACHES
UNIT 2– TIJUANA RIVER BEACH

Primary Constituent Elements: Beaches, dunes, and estuaries that provide habitat, or with rehabilitation, could provide habitat for nesting, roosting, foraging, and migration.

Dated: February 1, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–4422 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday
March 2, 1995

Part IV

Department of Energy

48 CFR Parts 927, 952 and 970
Acquisition Regulation; Updating of Patent Regulations; Final Rule

DEPARTMENT OF ENERGY

48 CFR Parts 927, 952 and 970

RIN 1991–AA23

Acquisition Regulation; Updating of Patent Regulations

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department today amends the Department of Energy Acquisition Regulation (DEAR) to base the DOE patent regulations on the Federal Acquisition Regulation (FAR) patent regulations at Subpart 27.2 and the associated FAR patent clauses at 52.227 to the extent that the FAR coverage is consistent with the DOE statutory patent requirements.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT:

Robert M. Webb, Procurement Policy Division (PR–121), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–8264

Sue Palk, Office of the Assistant General Counsel for Intellectual Property (GC–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–2802

SUPPLEMENTARY INFORMATION:

I. Background

A. Discussion

The proposed rule was published on March 29, 1994, at 59 FR 14593 (1994). It was intended to amend the Department of Energy Acquisition Regulation to reflect the changes to DOE's statutory patent policy, arising out of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*, and the Federal Non-Nuclear Energy Research and Development Act, 42 U.S.C. 5901 *et seq.*, necessitated by the Bayh-Dole Act of 1980 and the Trademark Clarification Act of 1984. The rule is based on patent provisions at FAR 27.3 and FAR 52.227, varying to the extent necessary to fulfill DOE statutory and programmatic duties.

Six sets of comments were received. Of those one was from a private citizen, one was from a private organization, and four were from current DOE management and operating contractor organizations.

B. Disposition of Comments

Two commenters question the relationship of this rulemaking to DOE's contract reform initiative. This rulemaking, as stated in the preamble to the proposed rule is intended to update the DOE coverage of patent rights and to bring DOE's regulations on the subject more in line with the provisions of the Federal Acquisition Regulation (FAR). DOE believes this rulemaking is overdue and must be carried to completion. Any final developments of the Contract Reform Initiative that will affect patent rights will be reflected in a subsequent rulemaking.

One commenter questions the Department's ability to ''issue independent technical data clauses which are deviations from those clauses published in the FAR.'' This rulemaking is directed to DOE's patent regulations, not its technical data regulations. The special status for DOE's patent coverage is statutory and was discussed in detail in the preamble to the proposed rule for this rulemaking. No change has been made.

The same commenter has questioned the inclusion of ''demonstration'' with research and development in establishing the scope of this regulation, while another has requested that the term be defined to distinguish the term from ''research and development'' to clarify the different rights that may accrue. As explained in the proposed rule, ''research, development, and demonstration'' is the statutory scope for the Department's patent policy and has been incorporated into this rulemaking. The second commenter requested a definition of ''demonstration'' predicated upon an assumption that different rights may accrue. This is not the case. We believe that the term ''demonstration,'' particularly in light of its statutory basis, to be sufficiently clear. Therefore, neither change has been made.

One commenter suggests that the regulations at 927.300 and 927.302 refer to financial assistance transactions. The DEAR controls the award and administration in DOE of procurement contracts, the purposes of which are described in Public Law 95–224. It does not control the award or administration of either grants or cooperative agreements, assistance transactions, as the purposes of those terms are described in the same public law. For the Department of Energy, the regulations governing assistance transactions are contained at 10 CFR part 600. For this reason, we have made not made the suggested change. The regulations governing patents for assistance instruments will be the subject of a separate rulemaking.

A commenter noted that at the new 927.300 the reference to the regulations that control DOE's granting of waivers of its ownership of inventions should be corrected to reflect that the location and content of those is not being affected by this rulemaking and will continue to exist at 41 CFR 9–9.1 of the old Department of Energy Procurement Regulations (DOE PR) until they are made the subject of their own rulemaking. A change has been made to the first sentence of 927.300(b). That same commenter suggests that the restatement of DOE policy concerning the granting of waivers at 927.300(b) and (c) be deleted. We believe those provisions are descriptive of the policy and yet make it clear that the controlling regulations are located elsewhere. Therefore, we have retained those provisions, modified as described above. We deleted the second sentence of 927.300(a) as unnecessary.

One commenter suggests that ''Government'' be substituted for ''DOE'' in the first sentence of 927.302(a). We have chosen to make a change using the phrase ''the United States, as represented by DOE,''.

The same commenter states that the statement of the authorities of the Assistant General Counsel for Technology Transfer and Intellectual Property that were contained at 9–9.109–3(d) of the DOE PR should be retained. We agree and have added them at 927.302(d).

Another commenter requests the addition of the phrase ''or is unable to meet these market demands within a reasonable time'' be added to the description of circumstances at 927.302(b) in which DOE would exercise its rights to require licensing of background patents to third parties on reasonable terms and conditions. The statement at 927.302(b) is merely descriptive, and, in fact, describes the substantial considerations in the Government's application for licensing of third parties. The terms of paragraph (k) of the clause at 952.227–13 control, and provide the contractor the opportunity to demonstrate to the Department's satisfaction that either the current market situation is satisfactory or can be made so in a reasonable time. We have not made a change, believing that the current sentence is descriptive. Any additional discussion would

require additional clarification, adding to the complexity of a provision that is merely descriptive, not regulatory.

A commenter has suggested revision of the third sentence of 927.302(c) to correct ambiguities in the listing of types of contracts for which the Government's rights in background patents may not be appropriate. We have made changes to the sentence that accomplish the intended purpose.

One commenter has noted that the clause at FAR 52.227–12, appropriately modified may suffice as a patent rights clause in a contract for which DOE has granted an advance waiver of its title. That may be the case. We have modified section 927.303(b) to reflect that possibility while maintaining the prohibition against the use of the clause generally.

One commenter objects to the inclusion at 952.227–9 of the Refund of Royalties clause in place of a clause of the same name in the FAR. The commenter suggests the use of a supplemental provision and, along with a second commenter, questions the authority of DOE to publish this clause where there is already a FAR provision. As explained in the preamble to the proposed rule, this clause is the FAR clause at 52.227–9 with the addition of sentences to assure the recognition of royalties deriving from technical data and copyrighted material and a disclaimer. The purpose of this clause and the FAR clause upon which it is based is to prevent the Government's paying royalties relating to a form of intellectual property to which it already has a license, perhaps royalty free. We have acted to expand the FAR provision to include all forms of intellectual property and to assure a continuing right to challenge the validity of intellectual property giving rise to the royalty. We believe these concerns to be of significant importance to DOE with its expansive technological mission. No entity is hurt by the minor changes to the FAR clause, except a firm that may today be in a position to acquire royalties from a Government contractor for use of technical data or copyrighted material to which the Government already has a license. We have retained the clause as it is in the proposed rule.

The second commenter says that the clause ''is unclear on whether costs paid for technical assistance and transfer of know how are subject to repayment when the information transferred is not protected by a valid patent, copyright, or otherwise qualifies for intellectual property protections.'' We disagree. This clause in either of its forms is premised upon the payment of what is commonly recognized as a royalty or license fee. In order for a royalty to be paid the payee must recognize a proprietary right in the property. If no such basis exists, a royalty would not be paid. The types of costs would be subject to the clause only to the extent that they are part of a royalty agreement and could be classified as a royalty. We have made no change.

We have deleted the phrase ''in the performance of work'' from the definition of ''subject invention'' as it appears in the clause at 952.227–13 to conform more closely to the statutory language. We have altered the definition of ''patent counsel'' in that clause to mean the patent counsel responsible for patent administration under the specific contract, rather than Headquarters Patent Counsel.

One commenter objects to the use of the word ''consultation'' in paragraph (b)(2) of the clause at 952.227–13 expressing the obligations of an employee prior to that employee's asserting an interest in a subject invention. The previous DOE clause allowed an employee-inventor to request greater rights after acquiring the authorization of the contractor-employer. Since the promulgation of the previous DOE clause, Bayh-Dole was enacted, offering this right to employee-inventors upon consultation with their small business or nonprofit employers. The FAR in the clause at 52.227–13 for use with large, profit-making companies has reflected this change.

The proposed rule language was premised upon the FAR language. Bayh-Dole and the FAR reflect an interest in maximizing the commercialization of inventions under Government contracts in these circumstances in which the contractor-employer has chosen not to pursue a request for greater rights in a subject invention. We can identify no DOE interest that demands that the employee-inventor acquire the permission of his employer. The contractor-employer can control this situation by fashioning an employment agreement to protect its interest. Such an agreement, not this clause, will control what form the employee-inventor's ''consultation'' takes. We have made no change.

One commenter has suggested that paragraph (e)(2) of the clause at 952.227–13 include a recognition of a statutory premise ''that a reported invention will be deemed to have been made in the manner specified in Section (a) (1) and (2) of 42 U.S.C. 5908 unless the contractor contends in writing when the invention is reported that it was not so made.'' We agree and have made the change.

A commenter opposes the Government's acquisition of rights in background patents in paragraph (k) of the clause at 952.227–13(k) and as described at 927.302(b), stating that ''it could be argued that the DOE is vesting itself with the power to take the property of others without paying valid compensation.'' The commenter suggests that ''[i]f the DOE requires such rights, it can negotiate to purchase them like any contracting party, or (sic) in the alternative, it may utilize its rights under FAR 52.227–1 ''Authorization and Consent.'' We disagree. First, the inclusion of paragraph (k) represents the acquisition of an inchoate right which goes to the heart of the involvement of public funds in the particular project at a time in which the parties are at an equal bargaining position. These rights provide DOE only a nonexclusive and royalty free license ''for the purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.'' Furthermore, DOE can demand that the contractor license third parties to its background patents only under a limited set of circumstances ''on terms that are reasonable under the circumstances.'' Should, in fact, the contractor be put in a monopolistic position in the market place as a result of the research, development, or demonstration of the contract with DOE and should that contractor choose not to meet market demand, DOE would be in a compromised bargaining position. Without the rights provided for in paragraph (k), DOE or any third party would have to pay dearly to acquire these background rights even though Federal taxpayer funds would have played a meaningful part in the contractor's market position. We have made no change.

Additionally, we have reviewed the proposed clause at 952.227–13 after having reflected the comments received and have made technical changes necessary to accurately reflect DOE's statutory patent policy and to enhance the smooth operation of the clause. We believe that the only changes of any significance, both occurring in the definition of ''subject invention,'' are required by DOE's statute, *i.e.*, adding the phrase ''in the course of or'' before ''under this contract'' and deleting the ''provided'' clause that runs to the end of that definition. The first of these causes that definition to accurately reflect the statutory scope, and the second is necessary to reflect the breadth of that statutory scope.

We have added a definition of Patent Counsel and substituted that office for the Secretary of Energy where receipt of

communication occurs in the text of the clause. We have also added a definition of DOE patent waiver regulations and used that term where appropriate in the text of the clause. We deleted the definition of the Head of contracting agency and used Secretary of Energy where appropriate throughout the clause.

In several places in the clause the proposed clause used the word ''retain'' in the context of the greater rights determination. We have used more specific terms depending upon the context to reflect the contractor's right to ''request'' greater rights or the Department's having ''granted'' the contractor greater rights.

In the third sentence of paragraph (b)(2)(i), we have substituted a definite condition for the application of the minimum rights flowing to the Government under paragraph (c) upon its granting a request for waiver in place of ''normally.''

At paragraph (b)(2)(ii) we have substituted a time certain, two months after filing the patent application, rather than ''upon request'' for the contractor's providing identifying information relating to the application. We have also edited that subparagraph to grammatically reflect the separate duties with regard to a patent application and issuance of the patent. In order to assure that a contractor's patent application not expire for failure to prosecute we have added new subparagraph (b)(2)(iii) requiring notice by the contractor should it decide not to prosecute. The subparagraph (iii) of the proposed rule has been redesignated as subparagraph (iv).

We have substituted the term ''subparagraphs(c)(1)'' for ''subdivisions'' in subparagraph (c)(1)(iii). The former reference added unnecessarily to the opportunity for misinterpretation.

At paragraph (d)(4)(vi) we have corrected a reference for the duration of the time period for DOE's not publishing invention disclosures relating to an application for foreign patent rights by providing for that time period to be determined by the DOE patent counsel. At subparagraph (d)(4)(vii), we have corrected a mistaken reference in the first sentence with the phrase ''in a timely manner.'' We have added as the penultimate sentence of paragraph (e)(2) a description of the report called for. At paragraph (e)(5) we have corrected a reference that is in error in the FAR clause, *i.e,* ''FAR 27.302(j)'' in place of ''FAR 27.302(i).''

Finally, with regard to the clause, at paragraph (g)(3), we have substituted the obligation of acquiring an affirmative patent clearance before final payment in lieu of ''past due confirmatory instruments.''

A commenter questions the provision at 970.2702(b) that describes the right of management and operating contractors, not small businesses or nonprofit entities, to request advance waivers and waivers in identified inventions. He suggests that this premise makes this a ''significant regulatory action.'' We disagree. These rights have existed throughout the history of DOE's statutory patent policy. We have made an attendant change in the last sentence of this subsection substituting ''42 U.S.C. 5908'' for ''927.300.''

The same commenter has suggested the insertion of the word ''nonprofit'' in the first sentence of 970.2702(e) describing Bayh-Dole rights of DOE management and operating contractors. We have made the change.

Two commenters question the provisions of 970.2703 and the provisions of paragraph (m) of the clause at 970.5204–XX, relating to the transfer of title and reservation of income from licensing of subject inventions for the benefit of the laboratory, rather than the contractor. Both note that Bayh-Dole vests title in the nonprofit or educational entities and suggest that the provisions do not comply with the law where DOE employs such an entity to manage and operate one of its facilities. This provision merely reflects the reality of provisions of DOE's management and operating contracts in the interplay between patent provisions and technology transfer. That reality takes into account the special position of DOE's management and operating contractors as was recognized in Bayh-Dole. We have made no change at either place.

One commenter questions 970.2795(c), saying that it should be revised ''to indicate that the limitations on the use of contractor employees only apply to those contractor employees assigned to, and working at the DOE facility.'' This provision verbatim existed before this rulemaking at 970.2701(d). An underlying premise of DOE's management and operating contracts is that the organization is independent of its corporate body. The workforce is dedicated to the work and is located at the DOE facility. This provision is written to that reality, and must remain that way to prevent any unintended restriction on its application. No change has been made.

II. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this final rulemaking. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Review Under NEPA

The DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)), the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), or the DOE guidelines (10 CFR Part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, and in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all

decisions involved in promulgating and implementing a policy action.

Today's final rule will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This final rule will have no preemptive effect, will not have any effect on existing Federal laws, and will only clarify the existing regulations on this subject. The revised clauses will apply only to contracts which would be awarded after the effective date of the final rule, and, thus, have no retroactive effect. Therefore, DOE certifies that this final rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

List of Subjects in 48 CFR Parts 927, 952, 970

Government procurement, Patents.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., on February 16, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

PART 927—PATENTS, DATA, AND COPYRIGHTS

1. The authority citation for part 927 continues to read as follows:

Authority: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); Sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168); Federal Nonnuclear Energy Research and Development Act of 1974, sec. 9 (42 U.S.C. 5908); Atomic Energy Act of 1954, as amended, sec. 152 (42 U.S.C. 2182); Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987, as amended, sec. 3131(a) (42 U.S.C. 7261a.)

2. Subpart 927.2 is added to read as follows:

Subpart 927.2—Patents

Sec.
927.200 Scope of subpart.
927.201 Authorization and consent.
927.201–1 General.
927.206 Refund of royalties.
927.206–1 General.
927.206–2 Clause for refund of royalties.
927.207 Classified contracts.
927.207–1 General.

Subpart 927.2—Patents

927.200 Scope of subpart.

When consulting 48 CFR part 27, subpart 27.2 of the FAR, consider ''research, development, and demonstration'' to replace the phrase ''research and development'' or ''R&D,'' for the purposes of DOE actions.

927.201 Authorization and consent.

927.201–1 General.

In certain contracting situations, such as those involving research, development, or demonstration projects, consideration should be given to the impact of third party-owned patents covering technology that may be incorporated in the project which patents may ultimately affect widespread commercial use of the project results. In such situations, Patent Counsel shall be consulted to determine what modifications, if any, are to be made to the utilization of the Authorization and Consent and Patent Indemnity provisions or what other action might be deemed appropriate.

927.206 Refund of royalties.

927.206–1 General.

The clause at 952.227–9, Refund of Royalties, obligates the contractor to inform DOE of the payment of royalties pertaining to the use of intellectual property, either patent or data related, in the performance of the contract. This information may result in identification of instances in which the Government already has a license for itself or others acting in its behalf or the right to sublicense others. Also, there may be pending antitrust actions or challenges to the validity of a patent or the proprietary nature of the data, or the contractor may be able to gain unrestricted access to the same data through other sources. In such situations the contractor may avoid the payment of a royalty in its entirety or may be charged a reduced royalty.

927.206–2 Clause for refund of royalties.

The contracting officer shall insert the clause at 952.227–9, Refund of Royalties, in solicitations and contracts for experimental, research, developmental, or demonstration work or other solicitations and contracts in which the contracting officer believes royalties will have to be paid by the contractor or a subcontractor of any tier.

927.207 Classified contracts.

927.207–1 General.

Unauthorized disclosure of classified subject matter, whether in a patent application or resulting from the issuance of a patent, may be a violation of the Atomic Energy Act of 1954, as amended, other laws relating to espionage and national security, and provisions of the proposed contract pertaining to disclosure of information.

3. Section 927.300 is revised to read as follows:

927.300 General.

(a) One of the primary missions of the Department of Energy is the use of its procurement process to ensure the conduct of research, development, and demonstration leading to the ultimate commercialization of efficient sources of energy. To accomplish its mission, DOE must work in cooperation with industry in the development of new energy sources and in achieving the ultimate goal of widespread commercial use of those energy sources. To this end, Congress has provided DOE with the authority to invoke an array of incentives to secure the commercialization of new technologies developed for DOE. One such important incentive is provided by the patent system.

(b) Pursuant to 42 U.S.C. 2182 and 42 U.S.C. 5908, DOE takes title to all inventions conceived or first actually reduced to practice in the course of or under contracts with large, for-profit companies, foreign organizations, and others not beneficiaries of Pub. L. 96–517. Regulations dealing with Department's authority to waive its title to subject inventions, including the relevant statutory objectives, exist at 41 CFR 9–9.109. Pursuant to that section, DOE may waive the Government's patent rights in appropriate situations at the time of contracting to encourage industrial participation, foster commercial utilization and competition, and make the benefits of DOE activities widely available to the public. In

addition to considering the waiver of patent rights at the time of contracting, DOE will also consider the incentive of a waiver of patent rights upon the reporting of an identified invention when requested by such entities or by the employee-inventor with the permission of the contractor. These requests can be made whether or not a waiver request was made at the time of contracting. Waivers for identified inventions will be granted where it is determined that the patent waiver will be a meaningful incentive to achieving the development and ultimate commercial utilization of inventions. Where DOE grants a waiver of the Government's patent rights, either at the time of contracting or after an invention is made, certain minimum rights and obligations will be required by DOE to protect the public interest.

(c) Another major DOE mission is to manage the nation's nuclear weapons and other classified programs, where research and development procurements are directed toward processes and equipment not available to the public. To accomplish DOE programs for bringing private industry into these and other special programs to the maximum extent permitted by national security and policy considerations, it is desirable that the technology developed in these programs be made available on a selected basis for use in the particular fields of interest and under controlled conditions by properly cleared industrial and scientific research institutions. To ensure such availability and control, the grant of waivers in these programs may necessarily be more limited, either by the imposition of field of use restrictions or national security measures, than in other DOE programs.

4. Section 927.302 is added to read as follows:

927.302 Policy.

(a) Except for contracts with organizations that are beneficiaries of Public Law 96–517, the United States, as represented by DOE, shall normally acquire title in and to any invention or discovery conceived or first actually reduced to practice in the course of or under the contract, allowing the contractor to retain a nonexclusive, revocable, paid-up license in the invention and the right to request permission to file an application for a patent and retain title to any ensuing patent in any foreign country in which DOE does not elect to secure patent rights. DOE may approve the request if it determines that such approval would be in the national interest. The contractor's nonexclusive license may be revoked or modified by DOE only to the extent necessary to achieve expeditious practical application of the invention pursuant to any application for and the grant of an exclusive license in the invention to another party.

(b) In contracts having as a purpose the conduct of research, development, or demonstration work and in certain other contracts, DOE may need to require those contractors that are not the beneficiaries of Public Law 96–517 to license background patents to ensure reasonable public availability and accessibility necessary to practice the subject of the contract in the fields of technology specifically contemplated in the contract effort. That need may arise where the contractor is not attempting to take the technology resulting from the contract to the commercial marketplace, or is not meeting market demands. The need for background patent rights and the particular rights that should be obtained for either the Government or the public will depend upon the type, purpose, and scope of the contract effort, impact on the DOE program, and the cost to the Government of obtaining such rights.

(c) Provisions to deal specifically with DOE background patent rights are contained in paragraph (k) of the clause at 952.227–13. That paragraph may be modified with the concurrence of Patent Counsel in order to reflect the equities of the parties in particular contracting situations. Paragraph (k) should normally be deleted for contracts with an estimated cost and fee or price of $250,000 or less and may not be appropriate for certain types of study contracts; for planning contracts; for contracts with educational institutions; for contracts for specialized equipment for in-house Government use, not involving use by the public; and for contracts the work products of which will not be the subject of future procurements by the Government or its contractors.

(d) The Assistant General Counsel for Technology Transfer and Intellectual Property shall:

(1) Make the determination that whether reported inventions are subject inventions under the patent rights clause of the contract;

(2) Determine whether and where patent protection will be obtained on inventions;

(3) Represent DOE before domestic and foreign patent offices;

(4) Accept assignments and instruments confirmatory of the Government's rights to inventions; and

(5) Represent DOE in patent, technical data, and copyright matters not specifically reserved to the Head of the Agency or designee.

5. Section 927.303 is added to read as follows:

927.303 Contract clauses.

(a) In solicitations and contracts for experimental, research, developmental, or demonstration work (but see (FAR) 48 CFR 27.304–3 regarding contracts for construction work or architect-engineer services), the contracting officer shall include the clause:

(1) At 952.227–13, Patent Rights Acquisition by the Government, in all such contracts other than those described in paragraphs (a)(2) and (a)(3) of this section;

(2) At 952.227–11, Patent Rights by the Contractor (Short Form), in contracts in which the contractor is a domestic small business or nonprofit organization as defined at (FAR) 48 CFR 27.301, except where the work of the contract is subject to an Exceptional Circumstances Determination by DOE; and

(3) At 970.5204–71 or 970.5204–72, as discussed in 970.27, Patent, Data, and Copyrights, in contracts for the management and operation of DOE laboratories and production facilities.

(b) DOE shall not use the clause at (FAR) 48 CFR 52.227–12 except in situations where patent counsel grants a request for advance waiver and supplies the contracting officer with that clause with appropriate modifications. Otherwise, in instances in which DOE grants an advance waiver or waives its rights in an identified invention, contracting officers shall consult with patent counsel for the appropriate clause.

6. Section 927.304 is added to read as follows:

927.304 Procedures.

Where the contract contains the clause at 952.227–11 and the contractor does not elect to retain title to a subject invention, DOE may consider and, after consultation with the contractor, grant requests for retention of rights by the inventor subject to the provisions of 35 U.S.C. 200 *et seq.* This statement is in lieu of (FAR) 48 CFR 27.304–1(c).

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. The authority citation for part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

8. Subsection 952.227–9 is added to read as follows:

952.227–9 Refund of Royalties.

As prescribed in 927.206–2, insert the following clause:

Refund of Royalties (MAR 1995)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term ''royalties'' as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract here-under. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or the copying of such data or data that is copyrighted.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.

(d) The Contractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.

(e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

(End of clause)

9. Subsection 952.227–11 is added to read as follows:

952.227–11 Patent rights—retention by the contractor (short form).

As prescribed in 927.303(a), insert the following clause:

PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SHORT FORM) (MAR 1995)

(a) *Definitions.*

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) *Made* when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) *Nonprofit organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) *Small business firm* means a small business concern as defined at section 2 of Public Law 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(6) *Subject invention* means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(7) *Agency licensing regulations* and *agency regulations concerning the licensing of Government-owned inventions* mean the Department of Energy patent licensing regulations at 10 CFR part 781.

(b) *Allocation of principal rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent application by Contractor.* (1) The Contractor will disclose each subject invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the DOE, the Contractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to DOE. However, in any case where publication, on sale or public use has initiated the l-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (c)(l), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) *Conditions when the Government may obtain title.* The Contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Contractor and protection of the Contractor right to file.* (1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor action to protect the Government's interest.* (1) The Contractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to DOE when requested under paragraph (d) of this clause and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, ''This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention.''

(g) *Subcontracts.* (1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor shall include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at 952.227–13.

(3) In the case of subcontracts, at any tier, DOE, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received, by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by that agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an

organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) *Communications.*

(1) The contractor shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.

(2) Each exercise of discretion or decision provided for in this clause, except subparagraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978.

(3) Upon request of the DOE Patent Counsel or the contracting officer, the contractor shall provide any or all of the following:

(i) A copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the contractor has applied for a patent;

(ii) A report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or

(iii) A report, prior to closeout of the contract, listing all subject inventions or stating that there were none.

(End of clause)

10. Subsection 952.227–13 is added to read as follows:

952.227–13 Patent Rights—Acquisition by the Government.

As prescribed at 927.303(c), insert the following clause:

PATENT RIGHTS—ACQUISITION BY THE GOVERNMENT (MAR 1995)

(a) Definitions.

Invention, as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Practical application, as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention, as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract.

Patent Counsel, as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.

DOE patent waiver regulations, as used in this clause, means the Department of Energy patent waiver regulations in effect on the date of award of this contract.

Agency licensing regulations and *applicable agency licensing regulations,* as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR part 781.

(b) Allocations of principal rights.

(1) *Assignment to the Government.* The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) of this clause.

(2) *Greater rights determinations.* (i) The Contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Contractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the Contracting Officer at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(ii) Within two (2) months after the filing of a patent application, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Contractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.

(iii) Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

(iv) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) *Minimum rights acquired by the Government.*

(1) With respect to each subject invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that—

(A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) The Contractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:

(A) The commercial use that is being made, or is intended to be made, of said invention, and

(B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(iii) If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

(iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(v) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:

(A) If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

(B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(vi) If the contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.

(vii) Subject to the license specified in subparagraphs (d) (1), (2), and (3) of this clause, the contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the contractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the contractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that is was not so made.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and certifying that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Contractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.*

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (e) (1) and (4) of this clause;

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment* (This paragraph does not apply to subcontracts). (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.

(ii) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) of this clause;

(iii) Disclose any subject invention pursuant to subparagraph (e)(2) of this clause;

(iv) Deliver acceptable interim reports pursuant to subparagraph (e)(3)(i) of this clause; or

(v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.*

(1) The contractor shall include the clause at 48 CFR 952.227–11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor shall include this clause (suitably modified to identify the parties). The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable

patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(i) *Preference United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *Atomic energy.*

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Contractor will obtain patent agreements to effectuate the provisions of subparagraph (e)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(k) *Background Patents.* (1) *Background Patent* means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract:

(i) Which the contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.

(3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

(4) Notwithstanding subparagraph (k)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(i) A competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

(ii) The Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(l) *Publication.* It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(m) *Forfeiture of rights in unreported subject inventions.* (1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by subparagraph (e)(2)(ii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Contractor:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or

(ii) Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or

(iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (m) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

(End of clause)

952.227–71 [Removed and Reserved]

11. Section 952.227–71 is removed and reserved.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

12. The authority citation for Part 970 continues to read as follows:

Authority. Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

13. Revise Section 970.2701 to read as follows:

970.2701 General.

This subpart applies to negotiation of patent rights and rights in technical data provisions for the Department of Energy contracts for the management and operation of its research and development and production facilities.

14. Revise 970.2702 to read as follows:

970.2702 Patent rights.

(a) Whenever a contract has as a purpose, the design, construction, or operation of a Government-owned research, development, demonstration or production facility, it is necessary that the Government be accorded certain rights with respect to further use of the facility by or on behalf of the Government upon termination of the contract, including the right to make, use, transfer, or otherwise dispose of all articles, materials, products, or processes embodying inventions or discoveries used or embodied in the facility regardless of whether or not conceived or first actually reduced to practice under or in the course of such a contract. Thus, both versions of the patent rights clause for management and operating contracts contain a facilities license.

(b) In the case of contractors operating and managing DOE research and development or production facilities, that are not the beneficiaries of Public

Law 96–517, the Department is statutorily obligated to take title to inventions conceived or first actually reduced to practice in the performance of the contracts. Here, as in all other circumstances in which the Department takes title to inventions by statute, the contractors may request a waiver at the time of contracting for a class of inventions or during contract performance for identified inventions. DOE includes the considerations at 42 U.S.C. 5908 in its determination as to whether to approve the request.

(c) While no contractor that manages and operates a DOE research and development or production facility is a small business, several have historically been nonprofit organizations. As such, they are the beneficiaries of the Bayh-Dole Act (35 U.S.C. 200 *et seq.*, as amended) and, therefore, receive the right to retain title to inventions conceived or first actually reduced to practice in the performance of their contracts with the Department, except in areas of technology covered by Exceptional Circumstances Determinations made by DOE or of nuclear weapons and naval nuclear propulsion. In these latter two areas, the contractor may request that the Department waive its title and, therefore, subject to the exceptions identified below, may be granted title to inventions conceived or first actually reduced to practice in the performance of its contract with the Department.

(d) DOE has exercised statutory authority granted under 35 U.S.C. 202(a)(ii) and 202(a)(iv). In accordance with 35 U.S.C. 202(a)(ii), DOE has issued several Exceptional Circumstances Determinations pursuant to which DOE nonprofit management and operating contractors have no right to elect title to inventions conceived or first actually reduced to practice in the course of or under their contracts within covered areas of technology. However, those contractors may be given some lesser property right in an invention within limits set by DOE in a particular Exceptional Circumstances Determination so that the contractor can effectively assist with a mission of DOE, such as technology transfer. As new technologies evolve, DOE may issue additional Exceptional Circumstances Determinations, as appropriate.

(e) In accordance with 35 U.S.C. 202(a)(iv), the Department of Energy has exempted its weapons related and naval nuclear propulsion programs from the broad Bayh-Dole right of its nonprofit management and operating contractors to elect title to inventions conceived or first actually reduced to practice in the course of or under their contracts. The effect of this exemption is that, if the contractors want to acquire title, they must request title to covered inventions. DOE may then grant the request subject to a case-by-case determination that the contractor has met all procedural requirements unilaterally set by DOE to insure that all national security concerns of DOE relating to the contractor's use of an invention in either of these two areas for commercialization have been met.

15. Section 970.2703 is added to read as follows:

970.2703 Technology transfer.

The National Competitiveness Technology Transfer Act of 1989 (NCTTA) (Pub. L. 101–189) established technology transfer as a mission for Government-owned, contractor-operated laboratories, including weapons production facilities, and authorizes those laboratories to negotiate and award cooperative research and development agreements with public and private entities for purposes of conducting research and development and transferring technology to the private sector. In implementing the NCTTA, DOE has negotiated technology transfer clauses with the contractors managing and operating its laboratories. Those technology transfer clauses must be read in concert with the patent rights clause required by this subpart. Thus, each management and operating contractor holds title to subject inventions for the benefit of the laboratory or facility being managed and operated by that contractor.

16. Section 970.2704 is added to read as follows:

970.2704 Patent clauses.

(a) Contracting officers shall insert the clause at 970.5204–71 in all management and operating contracts with nonprofit organizations.

(b) Contracting officers shall insert the clause at 970.5204–72 in all management and operating contracts with profit-making entities.

17. Add section 970.2705, and section 970.2706, as follows:

970.2705 Rights in technical data—general.

(a) A management and operating contractor's obligations for protection of information and data received from DOE and other contractors or subcontractors, and for the contractor's private use of contract data first produced in the performance of the contract, are set forth in paragraph (b)(2) of each Rights in Technical Data clause in 952.227. That subparagraph provides that the contractor may, subject to patent, security, or other provisions of the contract, use for its private purposes, contract data it first produces in the performance of the contract, provided that the contractor has met its data requirements (e.g., delivery of data in the form of progress or status reports specified to be delivered) as of the date of private use of such data. It is not necessary that a ''Final Report'' be submitted in order to privately use data if all required progress and interim reports and other technical data then due have been delivered. Paragraph (b)(2) of each Rights in Technical Data clause in 952.227 further provides that technical or other data received by the contractor in the performance of the contract must be held in confidence by the contractor in accordance with restrictions accompanying the data.

(b) Contractors should be aware that technical information which is reported to DOE by DOE contractors may be disseminated by DOE to others, subject to the restrictions included in the ''Rights to Technical Data'' clause.

(c) Employees of contractors operating DOE facilities may not be used to assist in the preparation of a proposal or bid for the performance of private commercial services similar or related to those being performed under the DOE contract unless such employee has been separated, with DOE approval, from performance of work under the DOE contract for such period as the Head of the Contracting Activity or designee shall direct consistent with the purpose of this section.

(d) Contractors operating DOE facilities and performing services as a part of their contract work for other Government agencies or private organizations should not be permitted to utilize information which is furnished by such customers for their own private activities unless it is generally available to others, or unless the customer authorizes such use.

970.2706 Rights in technical data—procedures.

(a) *General.* It is essential that DOE maintain continuity in its programs which are implemented by contracts for the operation of Government-owned facilities. Contract data first produced or specifically used in the performance of such contracts must be considered as integral to and remaining with the facility or plant after termination of such contracts and thus available to DOE and its future contractors for the continued use of the facility or plant. However, it is recognized that these contracts by their nature cannot always be subject to one set of prescribed contract provisions which will always

apply. Accordingly, the Rights in Technical Data-Facility clause set forth in 952.227–78 is to be used as a basic or minimal clause which may be modified or expanded with the concurrence of Patent Counsel to meet particular contract situations.

(b) Whenever a contract has as a purpose the operation of a Government-owned research or production facility, the clause set forth at 952.227–78 shall normally be included in the contract. Inasmuch as this clause secures to the Government ownership, access to, and, if requested, delivery of all technical data first produced in the performance of the contract and access to and delivery of technical data which are specifically used in the performance of the contract, there is no need to include the Additional Technical Data Requirements Clause of 952.227–73.

(c) *Subcontracting.* Unless otherwise directed by the contracting officer, the contractor shall be required to follow the policy and procedures of 927.402–1, 927.402–2, and 927.402–3 and shall employ the provisions of the Additional Technical Data Requirements clause of 952.227–73 and the Rights in Technical Data (Long Form) clause of 952.227–75, where appropriate, except in subcontracts for the design of special production plants or facilities or specially designed equipment for facilities or plants, in which instances contractors shall include the provisions of the Rights in Technical Data—Facility clause of 952.227–78.

(d) *Optional clause—Limited rights in proprietary data.* In contracts where it is determined that delivery of proprietary data is necessary with limited rights in the Government, the Rights in Technical Data clause of this section shall be supplemented by the additional paragraph (e), set forth in 952.227–79. Paragraph (e) provides that technical data may be specified in the contract as being excluded from the delivery requirements thereof. Alternatively, paragraph (e) may be limited or made applicable to only those classes of proprietary data determined as being necessary for delivery with limited rights. In addition, when furnishing proprietary data with the limited rights legend, paragraphs (a), (b) and (c) of 952.227–79 may be modified as follows. When proprietary data is to be furnished only for evaluation, paragraph (a) of the limited rights legend shall be used, and paragraphs (b) and (c), if otherwise inapplicable, may be deleted. When there is a programmatic requirement that proprietary data be disclosed to other DOE contractors only for information or use in connection with work performed under their contracts, paragraph (b) of the limited rights legend shall be used, and paragraphs (a) and (c) may be deleted if otherwise inapplicable. In either of the foregoing examples, the contractor may, if it can show the possibility of a conflict of interest because of disclosure of such data to certain contractors or evaluators, exclude contractors or evaluators from paragraph (a) or (b). If the data is required solely for emergency repair or overhaul, paragraph (c) of the limited rights legend shall be retained, and paragraphs (a) and (b) may, unless otherwise applicable, be deleted. In the event that it is determined that all of the paragraphs (a), (b) and (c) of the limited rights legend are to be deleted, the word ''none'' shall be inserted in the legend after the colon (:).

(e) For contracts involving access to certain categories of DOE-owned restricted data, as set forth in 10 CFR Part 725, see 927.402–1(h).

18. Subsection 970.5204–71 is added to read as follows:

970.5204–71 Patent Rights—Nonprofit Management and Operating Contractors.

As prescribed at 970.2703, insert the clause at 952.227–11, Patent Rights-Retention by the Contractor (Short Form) with the following changes:

PATENT RIGHTS-NONPROFIT MANAGEMENT AND OPERATING CONTRACTORS (MAR 1995)

1. Replace subparagraph (e)(1) with the following: (e)(1) The contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. When DOE approves such reservation, the contractor's license will extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

2. Add the following paragraphs (m) and (n): (m) Transfer to successor contractor. (1) In the event of termination or expiration of this contract, the contractor shall transfer any unexpended balance of income received relating to intellectual property, in accordance with instructions from the contracting officer, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The contractor shall also transfer title, as one package, in all patents and patent applications, license agreements, accounts containing royalty revenues from such license agreements, including equity positions in third-party entities, and other intellectual property that arose under the performance of this contract, to the successor contractor or to the Government, as directed by the contracting officer.

(2) The Government agrees that the recipient of such title shall assume any remaining obligations and liabilities in connection with the patents and patent applications.

(n) Facilities license. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of these rights shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(End of clause)

19. Subsection 970.5204–72 is added to read as follows:

970.5204–72 Patent Rights—Profit-Making Management and Operating Contractors

As prescribed at 970.2703, insert the clause at 952.227–13, Patent Rights-Retention by the Government, with the following changes:

PATENT RIGHTS—PROFIT-MAKING MANAGEMENT AND OPERATING CONTRACTORS (MAR 1995)

1. Add the following paragraphs (j) and (k):

(j) Transfer to successor contractor. (1) In the event of termination or expiration of this contract, the contractor shall transfer any unexpended balance of income received relating to intellectual property, in accordance with instructions from the contracting officer, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The contractor shall also transfer title, as one package, in all patents and patent applications, license agreements, accounts containing royalty revenues from such license agreements, including equity positions in third-party entities, and other intellectual property that arose under the performance of this contract, to the successor contractor or to the Government, as directed by the contracting officer.

(2) The Government agrees that the recipient of such title shall assume any remaining obligations and liabilities in connection with the patents and patent applications.

(k) Facilities License. In addition to the rights of the parties with respect to

inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of these rights shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(End of clause)

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Part V

Department of Housing and Urban Development

24 CFR Parts 243, 760 and 889

Low Income Housing: Elderly Persons Supportive Housing; Management and Operation Requirements; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 243, 760 and 889

[Docket No. R–95–1767; FR–3336–I–01]

RIN 2502–AF86

Supportive Housing for the Elderly; Management

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule establishes the requirements related to management and operation of the Supportive Housing for the Elderly Program. The purpose of the Supportive Housing for the Elderly Program is to enable elderly persons to live with dignity and independence by expanding the supply of supportive housing that is designed to accommodate the special needs of elderly persons and provides a range of services that are tailored to the needs of elderly persons occupying such housing. An interim rule similar to this interim rule is also being published in today's **Federal Register** for the Supportive Housing for Persons with Disabilities Program. This interim rule also adds both Supportive Housing programs to the list of projects covered by the pet ownership requirements. This interim rule also applies the wage and claim consent form requirements to both programs.

DATES: Effective Date: April 3, 1995.

Sunset Provisions: Sections 243.3(c)(1), 760.3(b)(10) and (11), and 889.600 through 889.655, shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

Comments due date: May 1, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours (weekdays 7:30 a.m. to 5:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6130, Washington, DC 20410, telephone (202) 708–4542; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0470.

II. Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 provides for exceptions from that general rule when the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. These management rules vary only slightly from previous management requirements for the section 202 (of the Housing Act of 1959) direct loan program. This interim rule furthers the legislative mandate of section 202 of the Housing Act of 1959, as amended, and it involves only minor interpretations of that statute. The section 202 capital advance program currently is operating under a series of interim rules. The Department intends to publish a final rule that will incorporate public comments for all aspects of the section 202 capital advance program.

The Department also finds that prior public procedure would be impracticable. The Department has awarded capital advances since 1991, and many of these projects are approaching the management phase or have become operational. Management requirements are needed immediately to assure transition from the development phase to the management phase.

III. Sunset of Interim Rule

In accordance with the Department's policy on interim rules, the amendments made by this interim rule shall expire 18 months after the effective date of this interim rule, unless extended by notice published in the **Federal Register**, or adopted by a final rule published on or before the 18-month anniversary date of the effective date of this interim rule.

IV. Background

The Supportive Housing for the Elderly Program is authorized by section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (the NAHA Act) and the Housing and Community Development Act of 1992 (1992 Act). Under the program, which is implemented in 24 CFR part 889, assistance is provided to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. Such assistance is provided as (1) capital advances and (2) project rental assistance contracts. Capital advances may be used to finance the construction or rehabilitation of a structure, or the acquisition of a structure from the Resolution Trust Corporation (RTC), to be used as supportive housing for the elderly. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for the elderly.

On June 12, 1991, the Department published an interim rule (56 FR 27104) implementing the amendments made by section 801 of the NAHA to establish the Supportive Housing for the Elderly Program. That interim rule, which enabled the program to be funded for FY–1991, described application procedures and program requirements, selection of applications and duration of fund reservation requirements. A second interim rule was published on August 12, 1992 (57 FR 36338) to provide the development-related requirements (closing of capital advances and requirements related to project rental assistance contracts) of the program. The program was the subject of further amendments of the 1992 Act, which were implemented by a third interim rule published on May 5, 1993 (58 FR 26836). All three interim rules are codified at 24 CFR part 889.

Selection preference rules (§§ 889.611–889.615) for this program were published on July 18, 1994 at 59 FR 36616. Today's interim rule (subpart F, part 889) completes the establishment of the program by providing the requirements for management and operation of projects funded under the program. After the period of public comment is completed on this interim rule, the Department will develop a final rule based on all previous rules.

V. Summary of Interim Rule (Subpart F)

Subpart F provides the responsibilities of the Owner, requirements of the replacement reserve, selection and admission requirements for tenants, obligations of tenants, provisions regarding overcrowded and underoccupied units, lease requirements, and requirements regarding termination of tenancy, modifications of leases, security deposits and vacancy payments.

The subpart F requirements are similar to existing requirements for the section 202 Projects for Nonelderly Handicapped Families and Individuals receiving assistance under section 202(h) of the Housing Act of 1959. See 24 CFR 885.940–885.985.

Owner Responsibilities

The responsibilities of an Owner under part 889 include marketing, management and maintenance, contracting for services, submission of financial and operating statements, project fund accounting and reporting. Marketing must be conducted in accordance with the HUD-approved affirmative fair housing marketing plan and all Federal, State or local fair housing and equal opportunity requirements. The Owner is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for families occupying assisted units, collection of tenant payments, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with equal opportunity requirements. The Owner must also establish and maintain a replacement reserve to aid in funding extraordinary maintenance and repair and replacement of capital items.

The Owner is required to adopt written tenant selection procedures which ensure nondiscrimination in the selection of tenants and that are (1) consistent with the purpose of improving housing opportunities for very low-income elderly persons; and (2) reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. The Owner must comply with all nondiscrimination authorities. The Secretary is to provide to an appropriate agency in each area (which may be the applicable State or Area Agency on Aging) information regarding the availability of housing assisted under this part. The Owner must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units must complete a certification of eligibility as part of the application for admission.

The Owner is also responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant must be an elderly person (as defined in § 889.105); must meet any project occupancy requirements approved by HUD under § 889.305(a)(1); must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760; and must be a very low-income family, as defined by § 889.105. Under certain circumstances, HUD may permit the leasing of units to ineligible families under § 889.515. If the Owner determines that the family is eligible and is otherwise acceptable and units are available, the Owner will assign the family a unit. The Owner will assign the family a unit of the appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit is available, the Owner will place the family on a waiting list for the project and notify the family when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the Owner may advise the applicant that no additional applications for admission are being considered for that reason.

If the Owner determines that an applicant is ineligible for admission or the Owner is not selecting the applicant for other reasons, the Owner will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting to review the rejection, in accordance with HUD requirements.

Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be retained for three years. The Owner must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Owner must make appropriate adjustments in the total tenant payment in accordance with part 813, as modified by § 889.105, and must determine whether the family's unit size is still appropriate. The Owner must adjust tenant payment and the project rental assistance payment and must carry out any unit transfer in accordance with HUD standards.

Family Responsibilities

Families under the program are required to do the following: (1) Pay amounts due under the lease directly to the Owner; (2) supply such certification, release, information, or documentation as the Owner or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750, and the signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760; (3) allow the Owner to inspect the dwelling unit or residential space at reasonable times and after reasonable notice; (4) notify the Owner before vacating the dwelling unit; and (5) use the dwelling unit solely for residence by the family, and as the family's principal place of residence. The family may not assign the lease or transfer the unit, nor may it occupy, or receive assistance for the occupancy of a unit governed under this part while occupying, or receiving assistance for occupancy of, another unit assisted under any Federal housing assistance program, including any section 8 program.

Lease

The term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the family and Owner may execute a new lease for a term not less than one year, or may take no action. If no action is taken, the lease will automatically be renewed for successive terms of one month. The Owner shall use the lease form prescribed by HUD. The Owner may not use any of the prohibited provisions specified by HUD. In addition to required provisions of the lease form, the Owner may include a provision in the lease permitting the Owner to enter the leased premises, at any time, without advance notice where there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered. The provisions of part 247 apply to all decisions by an Owner to terminate the tenancy or modify the lease of a family residing in a unit.

Security Deposit

At the time of the initial execution of the lease, the Owner will require each family occupying a unit to pay a

security deposit in an amount equal to one month's total tenant payment or $50, whichever is greater. The family is expected to pay the security deposit from its own resources and other available public or private resources. The Owner may collect the security deposit on an installment basis. The Owner must place the security deposits in a segregated interest-bearing account.

Utility Allowances

The Owner must also submit an analysis of any utility allowances applicable. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, if utility rate changes would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Owner must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Owner will promptly notify affected families and make a corresponding adjustment of the tenant payment and the amount of the project rental assistance payment.

Vacancy Payments

Vacancy payments under the Project Rental Assistance Contract (PRAC) will not be made unless certain conditions for receipt of these project rental assistance payments are fulfilled. For each unit that is not leased as of the effective date of the PRAC, the Owner is entitled to vacancy payments in the amount of 50 percent of the per unit operating cost for the first 60 days of vacancy, if the Owner: (1) Conducted marketing in accordance with § 889.600(a) and otherwise complied with § 889.600; (2) has taken and continues to take all feasible actions to fill the vacancy; and (3) has not rejected any eligible applicant except for good cause acceptable to HUD. If an eligible family vacates a unit, the Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit operating cost for the first 60 days of vacancy if the Owner: (1) Certifies that it did not cause the vacancy by violating the lease, the PRAC, or any applicable law; (2) notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy upon learning of the vacancy or prospective vacancy; (3) has fulfilled and continues to fulfill the requirements specified in § 889.600(a)(2) and (3) and § 889.650(b)(2) and (3); and (4) for any vacancy resulting from the Owner's eviction of an eligible family, certifies that it has complied with § 889.635. If the Owner collects payments for vacancies from other sources (tenant payments, security deposits, payments under § 889.640(c), or governmental payments under other programs), the Owner shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed the approved per unit operating cost.

HUD Reviews

HUD shall conduct periodic on-site management reviews of the Owner's compliance with the requirements of part 889.

VI. Amendments to 24 CFR Parts 243 and 760

This interim rule also amends 24 CFR part 243 by including the Supportive Housing for the Elderly and Supportive Housing for Persons with Disabilities projects in the list of projects covered by the pet ownership requirements. The interim rule also amends part 760 and applies the wage and claim consent form requirements to the Supportive Housing for the Elderly and Supportive Housing for Persons with Disabilities Programs.

VII. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this interim rule does not have a significant economic impact on a substantial number of small entities. The interim rule would provide capital advances to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. Although small entities will participate in the program, the interim rule would not have a significant impact on them.

Executive Order 12606, the Family

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this interim rule will not have a significant impact on family formation, maintenance or well being.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the interim rule does not involve the preemption of State law by Federal statute or regulation and does not have federalism impacts.

Regulatory Agenda

This interim rule was listed as sequence number 1807 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57657) under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The program number is 14.157, Housing for the Elderly or Handicapped.

List of Subjects

24 CFR Part 243

Aged, Grant programs—housing and community development, Individuals with disabilities, Loans programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Reporting and recordkeeping requirements.

24 CFR Part 760

Grant programs—housing and community development, Income verification procedures, Indians, Intergovernmental relations, Loan programs—housing and community development, Penalties, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Wages.

24 CFR Part 889

Aged, Capital advance programs, Grant programs—housing and communtiy development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the Code of Federal Regulations is amended to read as follows:

PART 243—PET OWNERSHIP IN HOUSING FOR THE ELDERLY OR HANDICAPPED

1. The authority citation for part 243 continues to read as follows:

Authority: 12 U.S.C. 1701r–1; 42 U.S.C. 3535(d).

2. In § 243.3, paragraph (c) introductory text and paragraph (c)(1) are revised to read as follows:

§ 243.3 Definitions.

* * * * *

(c) *Project for the elderly or persons with disabilities* means a specific rental or cooperative multifamily property that, unless currently owned by HUD, is subject to a first mortgage, and:

(1) That is assisted under section 202 of the Housing Act of 1959, and as amended (Housing for the Elderly or Disabled or Supportive Housing for the Elderly) or is assisted under section 811 of the National Affordable Housing Act (Supportive Housing for Persons with Disabilities);

* * * * *

3. Section 243.4 is revised to read as follows:

§ 243.4 Effective date.

This part shall be effective on March 2, 1987. However, project owners shall have until May 1, 1987 to implement the provisions of this part. Section 243.3(c)(1) shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

PART 760—PROCEDURES FOR OBTAINING WAGE AND CLAIM INFORMATION ABOUT APPLICANTS AND PARTICIPANTS IN HUD'S SECTION 8 AND PUBLIC HOUSING PROGRAMS FROM STATE WAGE INFORMATION COLLECTION AGENCIES (SWICAs)

4. The authority citation for part 760 is revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437a, 1437d, 1437ee, 1437f, 3535(d), and 3544.

5. In § 760.3, paragraph (b) is amended by redesignating paragraphs (b)(10) through (b)(13) as paragraphs (b)(12) through (b)(15), and by adding new paragraphs (b)(10) and (b)(11), to read as follows:

§ 760.3 Applicability.

* * * * *

(b) * * *

(10) Part 889, Supportive Housing for the Elderly.

(11) Part 890, Supportive Housing for Persons with Disabilities.

* * * * *

6. Section 760.40 is amended by adding paragraph (c) to read as follows:

§ 760.40 Effective date of rule.

* * * * *

(c) *Expiration date.* Sections 760.3(b)(10) and (11) shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

7. The authority citation for part 889 continues to read as follows:

Authority: 12 U.S.C. 1701q, 42 U.S.C. 3535(d).

8. Section 889.100 is amended by adding paragraph (d) to read as follows:

§ 889.100 Purpose and policy.

* * * * *

(d) *Expiration date.* Sections 889.600 through 889.655 shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

9. Subpart F is amended by adding §§ 889.600, 889.605, 889.610, 889.620, 889.625, 889.630, 889.635, 889.640, 889.645, and 889.650, to read as follows:

Subpart F—Project Management

Sec.

Subpart F—Project Management

§ 889.600 Responsibilities of owner.

(a) *Marketing.* (1) The Owner must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability of the first unit. Market activities shall include the provision of notices of the availability of housing under the program to operators of temporary housing for the homeless in the same housing market.

(2) Marketing must be done in accordance with the HUD-approved affirmative fair housing marketing plan and all Federal, State or local fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of discriminatory considerations such as their race, color, creed, religion, familial status, disability, sex or national origin.

(3) At the time of PRAC execution, the Owner must submit to HUD a list of leased and unleased assisted units, with a justification for the unleased units, in order to qualify for vacancy payments for the unleased units.

(b) *Management and maintenance.* The Owner is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for families occupying assisted units, collection of tenant payments, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with equal opportunity requirements.

(c) *Contracting for services.* (1) With HUD approval, the Owner may contract with a private or public entity for performance of the services or duties required in paragraphs (a) and (b) of this section. However, such an arrangement does not relieve the Owner of responsibility for these services and duties. All such contracts are subject to the restrictions governing prohibited contractual relationship described in § 889.105 (definition of Owner). (These prohibitions do not extend to management contracts entered into by the Owner with the Sponsor or its non-profit affiliate.)

(2) Consistent with the objectives of Executive Orders 11625, 12432 and 12138, the Owner will promote awareness and participation of minority and women-owned business enterprises in contracting and procurement activities.

(d) *Submission of financial and operating statements.* The Owner must submit to HUD:

(1) Within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an independent public accountant and in the form required by HUD; and

(2) Other statements regarding project operation, financial conditions and occupancy as HUD may require to administer the PRAC and to monitor project operations.

(e) *Use of project funds.* The Owner shall maintain a separate project fund account in a depository or depositories which are members of the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund and shall deposit all tenant payments, charges, income, and revenues arising from project operation or ownership to this account. All project funds are to be deposited in Federally-insured accounts. All balances shall be fully insured at all times, to the maximum extent possible. Project funds must be used for the operation of the project (including required insurance coverage), and to make required deposits to the replacement reserve under § 889.605, in accordance with HUD-approved budget. Any remaining project funds in the project funds account (including earned interest) following the expiration of the fiscal year shall be deposited in a Federally-insured residual receipts account within 60 days following the end of the fiscal year. Withdrawals from this account may be made only for project purposes and with the approval of HUD. If there are funds remaining in the residual receipts account when the mortgage is satisfied, such funds shall be returned to HUD.

(f) *Reports.* The Owner shall submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements. See § 889.610(a). (Approved by the Office of Management and Budget under control number 2502–0470).

§ 889.605 Replacement reserve.

(a) *Establishment of reserve.* The Owner shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance and repair and replacement of capital items.

(b) *Deposits to reserve.* The Owner shall make monthly deposits to the replacement reserve in an amount determined by HUD.

(c) *Level of reserve.* The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve reach that level, the amount of the deposit to the reserve may be reduced with the approval of HUD.

(d) *Administration of reserve.* Replacement reserve funds must be deposited with HUD, or in a Federally-insured depository in an interest-bearing account(s) whose balances are fully insured at all times. All earnings including interest on the reserve must be added to the reserve. Funds may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

§ 889.610 Selection and admission of tenants.

(a) *Written tenant selection procedures.* The Owner shall adopt written tenant selection procedures which ensure nondiscrimination in the selection of tenants and that are consistent with the purpose of improving housing opportunities for very low-income elderly persons; and reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. The Owner must comply with the following nondiscrimination authorities: section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR Part 8; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR Part 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR Part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR Part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended), 3 CFR, 1964–1965 Comp., p. 339 and the implementing regulations at 41 CFR Chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing), 3 CFR, 1959–1963 Comp., p. 652, at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity. While local residency requirements are prohibited, local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the Owner's HUD-approved affirmative fair housing marketing plan. Preferences may not be based on the length of time the applicant has resided in the jurisdiction. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection. Additionally, owners shall maintain a written, chronological waiting list showing the name, race, gender, ethnicity and date of each person applying for the program.

(b) *Information on availability of assisted housing.* The Secretary shall provide to an appropriate agency in each area (which may be the applicable State or Area Agency on Aging) information regarding the availability of housing assisted under this part.

(c) *Application for admission.* The Owner must accept applications for admission to the project in the form prescribed by HUD and is obligated to confirm all information provided by the applicant families on the application. Applicant families must be requested to complete a release of information consent for verification of information. Applicant families applying for assisted units must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Applicant families must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760. Both the Owner and the applicant family must complete and sign the application for admission. On request, the Owner must furnish copies of all applications for admission to HUD.

(d) *Determination of eligibility and selection of tenants.* The Owner is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant must be an elderly person (as defined in § 889.105); must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760; and must be a very low-income family, as defined by § 889.105. Under certain circumstances, HUD may permit the leasing of units to ineligible families under § 889.515.

(e) *Unit assignment.* If the Owner determines that the family is eligible and is otherwise acceptable and units are available, the Owner will assign the family a unit. The Owner will assign the family a unit of the appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit is available, the Owner will place the family on a waiting list for the project and notify the family when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the Owner may advise the applicant that no

additional applications for admission are being considered for that reason.

(f) *Ineligibility determination.* If the Owner determines that an applicant is ineligible for admission or the Owner is not selecting the applicant for other reasons, the Owner will promptly notify the applicant in writing of the determination, the reasons for the determination, and the applicant's right to request a meeting to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by a member of the Owner's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights (e.g., rights granted under Federal, State, or local civil rights laws) if the applicant believes he or she is being discriminated against on a prohibited basis.

(g) *Records.* Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be retained for three years. See § 889.610(a).

(h) *Reexamination of family income and composition.* (1) *Regular reexaminations.* The Owner must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Owner must make appropriate adjustments in the total tenant payment in accordance with part 813, as modified by § 889.105, and must determine whether the family's unit size is still appropriate. The Owner must adjust tenant payment and the project rental assistance payment, and must carry out any unit transfer in accordance with HUD standards. At the time of reexamination under paragraph (h)(1) of this section, the Owner must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. For requirements regarding the signing and submitting of consent forms by families for obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 760.

(2) *Interim reexaminations.* The family must comply with the provisions in its lease regarding interim reporting of changes in income. If the Owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the Owner must consult with the family and make any adjustments determined to be appropriate. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Number at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 760. Any change in the family's income or other circumstances that result in an adjustment in the total tenant payment, tenant payment, and project rental assistance payment must be verified.

(3) *Continuation of project rental assistance payment.* (i) A family shall remain eligible for project rental assistance payment until the total tenant payment equals or exceeds the gross rent. The termination of subsidy eligibility will not affect the family's other rights under its lease. Project rental assistance payment may be resumed if, as a result of changes in income, rent or other relevant circumstances during the term of the PRAC, the family meets the income eligibility requirements of part 813 of this chapter (as modified in § 889.105) and project rental assistance is available for the unit under the terms of the PRAC. The family will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (d) of this section.

(ii) A family's eligibility for project rental assistance payment may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including information related to disclosure and verification of Social Security Numbers (as provided by 24 CFR part 750) or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760).

* * * * *

§ 889.620 Obligations of the family.

(a) Requirements. The family shall:

(1) Pay amounts due under the lease directly to the Owner;

(2) Supply such certification, release of information, consent, completed forms or documentation as the Owner or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750, and the signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760;

(3) Allow the Owner to inspect the dwelling unit or residential space at reasonable times and after reasonable notice;

(4) Notify the Owner before vacating the dwelling unit; and

(5) Use the dwelling unit solely for residence by the family and as the family's principal place of residence.

(b) *Prohibitions.* The family shall not:

(1) Assign the lease or transfer the unit; or

(2) Occupy, or receive assistance for the occupancy of, a unit governed under this part while occupying, or receiving assistance for occupancy of, another unit assisted under any Federal housing assistance program, including any section 8 program.

(Approved by the Office of Management and Budget under control number 2502–0470)

§ 889.625 Overcrowded and underoccupied units.

If the Owner determines that because of change in family size, a unit is smaller than appropriate for the eligible family to which it is leased, or that the unit is larger than appropriate, project rental assistance payment with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternate unit. If possible, the Owner will, as promptly as possible, offer the family an appropriate alternate unit. The Owner may receive vacancy payments for the vacated unit if the Owner complies with the requirements of § 889.650.

§ 889.630 Lease requirements.

(a) *Term of lease.* The term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the family and Owner may execute a new lease for a term not less than one year or may take no action. If no action is taken, the lease will automatically be renewed for successive terms of one month.

(b) *Termination by the family.* All leases may contain a provision that permits the family to terminate the lease upon 30 days advance notice. A lease for a term that exceeds one year must contain such provision.

(c) *Form.* The Owner shall use the lease form prescribed by HUD. In addition to required provisions of the lease form, the Owner may include a provision in the lease permitting the Owner to enter the leased premises, at any time, without advance notice where there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered.

§ 889.635 Termination of tenancy and modification of lease.

The provisions of part 247 of this title apply to all decisions by an Owner to terminate the tenancy or modify the lease of a family residing in a unit.

§ 889.640 Security deposits.

(a) *Collection of security deposit.* At the time of the initial execution of the lease, the Owner will require each family occupying a unit to pay a security deposit in an amount equal to one month's total tenant payment or $50, whichever is greater. The family is expected to pay the security deposit from its own resources and other available public or private resources. The Owner may collect the security deposit on an installment basis.

(b) *Security deposit provisions applicable to units. (1) Administration of security deposit.* The Owner must place the security deposits in a segregated interest-bearing account. The amount of the segregated, interest-bearing account maintained by the Owner must at all times equal the total amount collected from the families then in occupancy plus any accrued interest and less allowable administrative cost adjustments. The Owner must comply with any applicable State and local laws concerning interest payments on security deposits.

(2) *Family notification requirement.* In order to be considered for the refund of the security deposit, a family must provide the Owner with a forwarding address or arrange to pick up the refund.

(3) *Use of security deposit.* The Owner, subject to State and local law and the requirements of paragraph (b)(3) of this section, may use the family's security deposit balance as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days (or shorter time if required by State or local law) after receiving notification under paragraph (b)(2) of this section the Owner must:

(i) Refund to a family which does not owe any amount under the lease the full amount of the family's security deposit balance;

(ii) Provide to a family owing amounts under the lease a list itemizing each amount, along with a statement of the family's rights under State and local law. If the amount which the Owner claims is owed by the family is less than the amount of the family's security deposit balance, the Owner must refund the excess balance to the family. If the Owner fails to provide the list, the family will be entitled to the refund of the full amount of the family's security deposit balance.

(4) *Disagreements.* If a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the Owner in an informal meeting. The Owner must keep a record of any disagreements and meetings in a tenant file for inspection by HUD. The procedures of paragraph (b)(4) of this section do not preclude the family from exercising its rights under State or local law.

(5) *Decedent's interest in security deposit.* Upon the death of a member of a family, the decedent's interest, if any, in the security deposit will be governed by State or local law.

(c) *Reimbursement by HUD for assisted units.* If the family's security deposit balance is insufficient to reimburse the Owner for any amount which the family owes under the lease for a unit and the Owner has provided the family with the list required by paragraph (b)(3)(ii) of this section, the Owner may claim reimbursement from HUD for an amount not to exceed the lesser of:

(1) The amount owed the Owner; or

(2) One month's per unit operating cost, minus the amount of the family's security deposit balance. Any reimbursement under this section will be applied first toward any unpaid tenant payment due under the lease. No reimbursement may be claimed for unpaid tenant payment for the period after termination of the tenancy. The Owner may be eligible for vacancy payments following a vacancy in accordance with the requirements of § 889.650.

§ 889.645 Adjustment of utility allowances.

The Owner must submit an analysis of any utility allowances applicable. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, when utility rate changes would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Owner must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Owner will promptly notify affected families and make a corresponding adjustment of the tenant payment and the amount of the project rental assistance payment.

(Approved by the Office of Management and Budget under control number 2502–0470)

§ 889.650 Conditions for receipt of vacancy payments for assisted units.

(a) *General.* Vacancy payments under the PRAC will not be made unless the conditions for receipt of these project rental assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit that is not leased as of the effective date of the PRAC, the Owner is entitled to vacancy payments in the amount of 50 percent of the per unit operating cost for the first 60 days of vacancy, if the Owner:

(1) Conducted marketing in accordance with § 889.600(a) and otherwise complied with § 889.600;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) *Vacancies after rent-up.* If an eligible family vacates a unit, the Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit operating cost for the first 60 days of vacancy if the Owner:

(1) Certifies that it did not cause the vacancy by violating the lease, the PRAC, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 889.600(a)(2) and (3) and § 889.650(b)(2) and (3); and

(4) For any vacancy resulting from the Owner's eviction of an eligible family, certifies that it has complied with § 889.635.

(d) *Prohibition of double compensation for vacancies.* If the Owner collects payments for vacancies from other sources (tenant payments, security deposits, payments under § 889.640(c), or governmental payments under other programs), the Owner shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed the approved per unit operating cost.

§ 889.655 HUD review.

HUD shall conduct periodic on-site management inspections and reviews of the Owner's compliance with the requirements of this part.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–4890 Filed 3–1–95; 8:45 am]

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Federal Register

Thursday
March 2, 1995

Part VI

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 890

Supportive Housing for Persons With Disabilities; Management; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 890

[Docket No. R–95–1766; FR–3337–I–01]

RIN 2502–AF87

Supportive Housing for Persons With Disabilities; Management

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule establishes the requirements related to management and operation of the Supportive Housing for Persons with Disabilities Program. The purpose of the Supportive Housing for Persons with Disabilities Program is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that is designed to accommodate the special needs of such persons and provides supportive services that address the individual health, mental health, and other needs of such persons. Included in a companion interim rule in today's **Federal Register** for the management and operation of projects funded by the Supportive Housing for the Elderly Program are amendments which add both Supportive Housing programs to the list of projects covered by the pet ownership requirements, and which apply the wage and claim consent form requirements to both programs.

DATES: Effective Date: April 13, 1995.

Sunset Provisions: Sections 890.600 through 890.650 shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

Comments due date: May 1, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours (weekdays 7:30 a.m. to 5:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6130, Washington, DC 20410, telephone (202) 708–4542; (TDD) (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0470.

II. Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 provides for exceptions from that general rule when the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. These management rules vary only slightly from previous management requirements for the section 202/162 direct loan program for persons with disabilities. This interim rule furthers the legislative mandate of section 811 of the Cranston-Gonzalez National Affordable Housing Act, as amended, and it involves only minor interpretations of that statute. The section 811 capital advance program currently is operating under a series of interim rules. The Department intends to publish a final rule that will incorporate public comments for all aspects of the section 811 capital advance program.

Furthermore, the Department finds that prior public procedure would be impracticable. The Department has awarded capital advances since 1991, and many of these projects are approaching the management phase or have become operational. Management requirements are needed immediately to assure transition from the development phase to the management phase.

III. Sunset of Interim Rule

In accordance with the Department's policy on interim rules, the amendments made by this interim rule shall expire 18 months after the effective date of this interim rule, unless extended by notice published in the **Federal Register**, or adopted by a final rule published on or before the 18-month anniversary date of the effective date of this interim rule.

IV. Background

The Supportive Housing for Persons with Disabilities Program is authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act (the NAHA Act), as amended by the Housing and Community Development Act of 1992 (1992 Act). Under the program, which is implemented in 24 CFR part 890, assistance is provided to nonprofit organizations to expand the supply of supportive housing for persons with disabilities. Such assistance is provided as (1) capital advances and (2) project rental assistance contracts. Capital advances may be used to finance the acquisition with rehabilitation, acquisition without rehabilitation (group homes only), construction or rehabilitation of a structure, and acquisition of property from the Resolution Trust Corporation (group homes and independent living facilities) to be used as supportive housing for persons with disabilities. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

On June 12, 1991, the Department published an interim rule (56 FR 27070) implementing section 811 of the NAHA to establish the Supportive Housing for Persons with Disabilities Program. That interim rule, which enabled the program to be funded for FY–1991, described application procedures and program requirements, selection of applications and duration of fund reservation requirements. A second interim rule was published on August 12, 1992 (57 FR 36330) to provide the development-related requirements (closing of capital advances and requirements related to project rental assistance contracts) of the program. The program was the subject of further amendments by the 1992 Act, which were implemented by a third interim rule published on May 5, 1993 (58 FR 26816). All three interim rules are codified at 24 CFR part 890.

Today's interim rule (subpart F, part 890) completes the establishment of the program by providing the requirements for management and operation of projects funded under the program. After the period of public comment is

completed on this interim rule, the Department will develop a final rule based on all previous rules.

V. Summary of Interim Rule (Subpart F)

Subpart F provides the responsibilities of the Owner, requirements of the replacement reserve, selection and admission requirements for tenants, obligations of tenants, provisions regarding overcrowded and underoccupied units, lease requirements, and requirements regarding termination of tenancy, modifications of leases, security deposits and vacancy payments.

The subpart F requirements are similar to existing requirements for the Section 202 Projects for Nonelderly Handicapped Families and Individuals receiving assistance under section 202(h) of the Housing Act of 1959. See 24 CFR 885.940–885.985.

Owner Responsibilities

The responsibilities of an Owner under part 890 include marketing, management and maintenance, contracting for services, submission of financial and operating statements, project fund accounting and reporting. Marketing must be conducted in accordance with a HUD-approved affirmative fair housing marketing plan and all Federal, State or local fair housing and equal opportunity requirements. The Owner is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for households occupying assisted units or residential spaces, collection of tenant payments, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with equal opportunity requirements. The section 811 Owner must also establish and maintain a replacement reserve to aid in funding extraordinary maintenance, and repair and replacement of capital items.

The Owner is required to adopt written tenant selection procedures which ensure nondiscrimination in the selection of tenants and that are (1) consistent with the purpose of improving housing opportunities for very low-income persons with disabilities; and (2) reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. The Owner must comply with all nondiscrimination authorities. The Owner must accept applications for admission to the project in the form prescribed by HUD. Applicant households applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission.

The Owner is also responsible for determining whether applicants are eligible for admission and for the selection of households. To be eligible for admission, an applicant must be a disabled person (as defined in § 890.105); must meet any project occupancy requirements approved by HUD under § 890.305(a)(1); must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760; and must be a very low-income family, as defined by § 890.105. Owners shall make selections in a nondiscriminatory manner without regard to considerations such as race, religion, color, sex, national origin, familial status, or disability. However, an Owner may, with the approval of the Secretary, limit occupancy within housing developed under this part to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. Under certain circumstances, HUD may permit the leasing of units to ineligible families under § 890.515. If the Owner determines that the household is eligible and is otherwise acceptable and units (or residential spaces in a group home) are available, the Owner will assign the household a unit or residential space in a group home. If the household will occupy an assisted unit, the Owner will assign the household a unit of the appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit (or residential space in a group home) is available, the Owner will place the household on a waiting list for the project and notify the household when a suitable unit or residential space may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the Owner may advise the applicant that no additional applications for admission are being considered for that reason.

If the Owner determines that an applicant is ineligible for admission or the Owner is not selecting the applicant for other reasons, the Owner will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting to review the rejection, in accordance with HUD requirements.

Records on applicants and approved eligible households, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be retained for three years. The Owner must reexamine the income and composition of the household at least every 12 months. Upon verification of the information, the Owner must make appropriate adjustments in the total tenant payment in accordance with part 813, as modified by § 890.105, and must determine whether the household's unit size is still appropriate. The Owner must adjust tenant payment and the project rental assistance payment and must carry out any unit transfer in accordance with HUD standards.

Household Responsibilities

Households under the program are required to do the following: (1) Pay amounts due under the lease directly to the Owner; (2) supply such certification, release, information, or documentation as the Owner or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750, and the signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760; (3) allow the Owner to inspect the dwelling unit or residential space at reasonable times and after reasonable notice; (4) notify the Owner before vacating the dwelling unit or residential space; and (5) use the dwelling unit or residential space solely for residence by the household, and as the household's principal place of residence. The household may not assign the lease or transfer the unit or residential space, nor may it occupy, or receive assistance for the occupancy of a unit or residential space governed under this part while occupying, or receiving assistance for occupancy of, another unit assisted under any Federal housing assistance program, including any section 8 program.

Lease

The term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the household and Owner may execute a new lease for a term not less than one year, or may take no action. If no action is taken, the lease will automatically be

renewed for successive terms of one month. The Owner shall use the lease form prescribed by HUD. The Owner may not use any of the prohibited provisions specified by HUD. In addition to required provisions of the lease form, the Owner may include a provision in the lease permitting the Owner to enter the leased premises, at any time, without advance notice where there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered. The provisions of 24 CFR part 247 apply to all decisions by an Owner to terminate the tenancy or modify the lease of a household residing in a unit (or residential space in a group home).

Security Deposit

At the time of the initial execution of the lease, the Owner will require each household occupying an assisted unit (or residential space in a group home) to pay a security deposit in an amount equal to one month's tenant payment or $50, whichever is greater. The household is expected to pay the security deposit from its own resources and other available public or private resources. The Owner may collect the security deposit on an installment basis. The Owner must place the security deposits in a segregated interest-bearing account.

Utility Allowances

The Owner must submit an analysis of any utility allowances applicable in an independent living complex. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, if utility rate changes would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Owner must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Owner will promptly notify affected households and make a corresponding adjustment of the tenant payment and the amount of the project rental assistance payment.

Vacancy Payments

Vacancy payments under the Project Rental Assistance Contract (PRAC) will not be made unless the conditions for receipt of these project rental assistance payments are fulfilled. For each unit (or residential space in a group home) that is not leased as of the effective date of the PRAC, the Owner is entitled to vacancy payments in the amount of 50 percent of the per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy, if the Owner: (1) Conducted marketing in accordance with § 890.600(a) and otherwise complied with § 890.600; (2) has taken and continues to take all feasible actions to fill the vacancy; and (3) has not rejected any eligible applicant except for good cause acceptable to HUD. If an eligible household vacates an assisted unit (or residential space in a group home) the Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy if the Owner: (1) Certifies that it did not cause the vacancy by violating the lease, the PRAC, or any applicable law; (2) notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy upon learning of the vacancy or prospective vacancy; (3) has fulfilled and continues to fulfill the requirements specified in § 890.600(a) (2) and (3) and § 890.645(b) (2) and (3); and (4) for any vacancy resulting from the Owner's eviction of an eligible household, certifies that it has complied with § 890.630. If the Owner collects payments for vacancies from other sources (tenant payment, security deposits, payments under § 890.635(c), or governmental payments under other programs), the Owner shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed the approved per unit operating cost.

HUD Reviews

HUD shall conduct periodic on-site management reviews of the Owner's compliance with the requirements of part 890.

HUD Issuances

The Department intends to amend the Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, with these new part 890 requirements.

VI. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the undersigned hereby certifies that this interim rule does not have a significant economic impact on a substantial number of small entities. The interim rule would provide capital advances to private nonprofit organizations to expand the supply of supportive housing for persons with disabilities. Although small entities will participate in the program, the interim rule would not have a significant impact on them.

Executive Order 12606, the Family

The General Counsel, as the Designated Official for Executive order 12606, the Family, has determined that the provisions of this interim rule will not have a significant impact on family formation, maintenance or well being. No significant change in existing HUD policies or programs will result from promulgation of this interim rule, as those policies and programs relate to family concerns.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that this interim rule does not involve the preemption of State law by Federal statute or regulation and does not have federalism impacts.

Regulatory Agenda

This interim rule was listed as sequence 1809 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57658) under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The program number is 14.181, Supportive Housing for Persons with Disabilities.

List of Subjects in 24 CFR Part 890

Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, part 890 of title 24 of the

Code of Federal Regulations is amended as follows:

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

1. The authority citation for part 890 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8013.

2. Section 890.100 is amended by adding paragraph (d) to read as follows:

§ 890.100 Purpose and policy.

* * * * *

(d) *Effective date of regulation.* Sections 890.600 through 890.650 shall expire and shall not be in effect after October 2, 1996, unless changes in this interim rule are published as a final rule, or the Department publishes a notice in the **Federal Register** to extend the effective date.

3. Part 890 is amended by adding subpart F to read as follows:

Subpart F—Project Management

Sec.

Subpart F—Project Management

§ 890.600 Responsibilities of Owner.

(a) *Marketing.* (1) The Owner must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability for occupancy of the group home or the anticipated date of availability of the first unit in an independent living complex. Market activities shall include the provision of notices of the availability of housing under the program to operators of temporary housing for the homeless in the same housing market.

(2) Marketing must be done in accordance with a HUD-approved affirmative fair housing marketing plan and all Federal, State or local fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible households of similar income levels in the same housing market area have a like range of housing choices available to them regardless of discriminatory considerations such as their race, color, creed, religion, familial status, disability, sex or national origin.

(3) At the time of PRAC execution, the Owner must submit to HUD a list of leased and unleased assisted units (or in the case of a group home, leased and unleased residential spaces) with a justification for the unleased units or residential spaces, in order to qualify for vacancy payments for the unleased units or residential spaces.

(b) *Management and maintenance.* The Owner is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for households occupying assisted units or residential spaces, collection of tenant payments, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with equal opportunity requirements.

(c) *Contracting for services.* (1) With HUD approval, the Owner may contract with a private or public entity for performance of the services or duties required in paragraphs (a) and (b) of this section. However, such an arrangement does not relieve the Owner of responsibility for these services and duties. All such contracts are subject to the restrictions governing prohibited contractual relationship described in § 890.105 (definition of Owner) (These prohibitions do not extend to management contracts entered into by the Owner with the Sponsor or its non-profit affiliate).

(2) Consistent with the objectives of Executive Orders 11625, 12432 and 12138, the Owner will promote awareness and participation of minority and women's business enterprises in contracting and procurement activities.

(d) *Submission of financial and operating statements.* The Owner must submit to HUD:

(1) Within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an independent public accountant and in the form required by HUD; and

(2) Other statements regarding project operation, financial conditions and occupancy as HUD may require to administer the PRAC and to monitor project operations.

(e) *Use of project funds.* The Owner shall maintain a separate interest bearing project fund account in a depository or depositories which are members of the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund and shall deposit all tenant payments, charges, income and revenues arising from project operation or ownership to this account. All project funds are to be deposited in Federally insured accounts. All balances shall be fully insured at all times, to the maximum extent possible. Project funds must be used for the operation of the project (including required insurance coverage), and to make required deposits to the replacement reserve under § 890.605, in accordance with HUD-approved budget. Any remaining project funds in the project funds account (including earned interest) following the expiration of the fiscal year shall be deposited in a Federally-insured residual receipts account within 60 days following the end of the fiscal year. Withdrawals from this account may be made only for project purposes and with the approval of HUD. If there are funds remaining in the residual receipts account when the mortgage is satisfied, such funds shall be returned to HUD.

(f) *Reports.* The Owner shall submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements. See § 890.610(a). (Approved by the Office of Management and Budget under control number 2502–0470).

§ 890.605 Replacement reserve.

(a) *Establishment of reserve.* The Owner shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance and repair and replacement of capital items.

(b) *Deposits to reserve.* The Owner shall make monthly deposits to the replacement reserve in an amount determined by HUD.

(c) *Level of reserve.* The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve reach that level, the amount of the deposit to the reserve may be reduced with the approval of HUD.

(d) *Administration of reserve.* Replacement reserve funds must be deposited with HUD or in a Federally-insured depository in an interest-bearing account(s) whose balances(s) are fully insured at all times. All earnings including interest on the reserve must be added to the reserve. Funds may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

§ 890.610 Selection and admission of tenants.

(a) *Written tenant selection procedures.* The Owner shall adopt written tenant selection procedures which ensure nondiscrimination in the selection of tenants and that are consistent with the purpose of improving housing opportunities for very low-income persons with disabilities; and reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. The Owner must comply with the following nondiscrimination authorities: section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended), 3 CFR, 1964–1965 COMP., p. 339, and the implementing regulations at 41 CFR Chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing), 3 CFR, 1959–1963 COMP., p. 652, at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity. While local residency requirements are prohibited, local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the Owner's HUD-approved affirmative fair housing marketing plan. Preferences may not be based on the length of time the applicant has resided in the jurisdiction. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection. Additionally, owners shall maintain a written, chronological waiting list showing the name, race, gender and ethnicity and date of each person applying for the program.

(b) *Application for admission.* The Owner must accept applications for admission to the project in the form prescribed by HUD. Applicant households applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Applicant households must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Applicant families must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760. Both the Owner and the applicant household must complete and sign the application for admission. On request, the Owner must furnish copies of all applications for admission to HUD.

(c) *Determination of eligibility and selection of tenants.* The Owner is responsible for determining whether applicants are eligible for admission and for the selection of households. To be eligible for admission, an applicant must be a disabled person (as defined in § 890.105); must meet any project occupancy requirements approved by HUD under §§ 890.265(c)(14) and 890.305(a)(1); must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760; and must be a very low-income family, as defined by § 890.105. An Owner, may with the approval of the Secretary, limit occupancy within housing developed under this part to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. Owners shall make selections in a nondiscriminatory manner without regard to considerations such as race, religion, color, sex, national origin, familial status, or disability. However, an Owner may, with the approval of the Secretary, limit occupancy within housing developed under this part to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. Under certain circumstances, HUD may permit the leasing of units to ineligible families under § 890.515.

(d) *Unit assignment.* If the Owner determines that the household is eligible and is otherwise acceptable and units (or residential spaces in a group home) are available, the Owner will assign the household a unit or residential space in a group home. If the household will occupy an assisted unit, the Owner will assign the household a unit of the appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit (or residential space in a group home) is available, the Owner will place the household on a waiting list for the project and notify the household when a suitable unit or residential space may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the Owner may advise the applicant that no additional applications for admission are being considered for that reason.

(e) *Ineligibility determination.* If the Owner determines that an applicant is ineligible for admission or the Owner is not selecting the applicant for other reasons, the Owner will promptly notify the applicant in writing of the determination, the reasons for the determination, and the applicant's right to request a meeting to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by a member of the Owner's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights (*e.g.*, rights granted under Federal, State or local civil rights laws) if the applicant believes he or she is being discriminated against on a prohibited basis.

(f) *Records.* Records on applicants and approved eligible households, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be retained for three years. See § 890.610(a).

(g) *Reexamination of household family income and composition.*—(1) *Regular reexaminations.* The Owner must reexamine the income and composition of the household at least every 12 months. Upon verification of the information, the Owner must make appropriate adjustments in the total tenant payment in accordance with part 813 of this chapter, as modified by § 890.105, and must determine whether the household's unit size is still appropriate. The Owner must adjust tenant payment and the project rental assistance payment, and must carry out any unit transfer in accordance with HUD standards. At the time of reexamination under paragraph (g)(1) of this section, the Owner must require the household to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. For requirements regarding the signing and submitting of consent forms by families for obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 760.

(2) *Interim reexaminations.* The household must comply with the provisions in its lease regarding interim reporting of changes in income. If the Owner receives information concerning a change in the household's income or other circumstances between regularly scheduled reexaminations, the Owner must consult with the household and make any adjustments determined to be appropriate. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Number at interim reexaminations involving new household members. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 760. Any change in the household's income or other circumstances that result in an adjustment in the total tenant payment, tenant payment, and project rental assistance payment must be verified.

(3) *Continuation of project rental assistance payment.* (i) A household shall remain eligible for project rental assistance payment until the total tenant payment equals or exceeds the gross rent (or a pro rata share of the gross rent in a group home). The termination of subsidy eligibility will not affect the household's other rights under its lease. Project rental assistance payment may be resumed if, as a result of changes in income, rent or other relevant circumstances during the term of the PRAC, the household meets the income eligibility requirements of 24 CFR part 813 (as modified in § 890.105) and project rental assistance is available for the unit or residential space under the terms of the PRAC. The household will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (c) of this section.

(ii) A household's eligibility for project rental assistance payment may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including information related to disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750 or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760).

§ 890.615 Obligations of the household.

(a) *Requirements.* The household shall:

(1) Pay amounts due under the lease directly to the Owner;

(2) Supply such certification, release of information, consent, completed forms or documentation as the Owner or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750, and the signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760;

(3) Allow the Owner to inspect the dwelling unit or residential space at reasonable times and after reasonable notice;

(4) Notify the Owner before vacating the dwelling unit or residential space; and

(5) Use the dwelling unit or residential space solely for residence by the household and as the household's principal place of residence.

(b) *Prohibitions.* The household shall not:

(1) Assign the lease or transfer the unit or residential space; or

(2) Occupy, or receive assistance for the occupancy of, a unit or residential space governed under this part while occupying, or receiving assistance for occupancy of, another unit assisted under any Federal housing assistance program, including any section 8 program.

§ 890.620 Overcrowded and underoccupied units.

If the Owner determines that because of change in household size, an assisted unit is smaller than appropriate for the eligible household to which it is leased, or that the assisted unit is larger than appropriate, project rental assistance payment with respect to the unit will not be reduced or terminated until the eligible household has been relocated to an appropriate alternate unit. If possible, the Owner will, as promptly as possible, offer the household an appropriate alternate unit. The Owner may receive vacancy payments for the vacated unit if the Owner complies with the requirements of § 890.645.

§ 890.625 Lease requirements.

(a) *Term of lease.* The term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the household and Owner may execute a new lease for a term not less than one year or may take no action. If no action is taken, the lease will automatically be renewed for successive terms of one month.

(b) *Termination by the household.* All leases may contain a provision that permits the household to terminate the lease upon 30 days advance notice. A lease for a term that exceeds one year must contain such provision.

(c) *Form.* The Owner shall use the lease form prescribed by HUD. In addition to required provisions of the lease form, the Owner may include a provision in the lease permitting the Owner to enter the leased premises, at any time, without advance notice where there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered.

§ 890.630 Termination of tenancy and modification of lease.

The provisions of part 247 of this title apply to all decisions by an Owner to terminate the tenancy or modify the lease of a household residing in a unit (or residential space in a group home).

§ 890.635 Security deposits.

(a) *Collection of security deposit.* At the time of the initial execution of the lease, the Owner will require each household occupying an assisted unit (or residential space in a group home) to pay a security deposit in an amount equal to one month's tenant payment or $50, whichever is greater. The household is expected to pay the security deposit from its own resources and other available public or private resources. The Owner may collect the security deposit on an installment basis.

(b) *Security deposit provisions applicable to units.*—(1) *Administration of security deposit.* The Owner must place the security deposits in a segregated interest-bearing account. The amount of the segregated, interest-bearing account maintained by the Owner must at all times equal the total amount collected from the households then in occupancy plus any accrued interest and less allowable administrative cost adjustments. The Owner must comply with any applicable State and local laws concerning interest payments on security deposits.

(2) *Household notification requirement.* In order to be considered for the refund of the security deposit, a household must provide the Owner with a forwarding address or arrange to pick up the refund.

(3) *Use of security deposit.* The Owner, subject to State and local law and the requirements of paragraphs (b)(1) and (b)(3) of this section, may use the household's security deposit balance as reimbursement for any unpaid amounts which the household owes under the lease. Within 30 days (or shorter time if required by State or local

law) after receiving notification under paragraph (b)(2) of this section the Owner must:

(i) Refund to a household which does not owe any amount under the lease the full amount of the household's security deposit balance;

(ii) Provide to a household owing amounts under the lease a list itemizing each amount, along with a statement of the household's rights under State and local law. If the amount which the Owner claims is owed by the household is less than the amount of the household's security deposit balance, the Owner must refund the excess balance to the household. If the Owner fails to provide the list, the household will be entitled to the refund of the full amount of the household's security deposit balance.

(4) *Disagreements.* If a disagreement arises concerning reimbursement of the security deposit, the household will have the right to present objections to the Owner in an informal meeting. The Owner must keep a record of any disagreements and meetings in a tenant file for inspection by HUD. The procedures of paragraph (b)(4) of this section do not preclude the household from exercising its rights under State or local law.

(5) *Decedent's interest in security deposit.* Upon the death of a member of a household, the decedent's interest, if any, in the security deposit will be governed by State or local law.

(c) *Reimbursement by HUD for assisted units.* If the household's security deposit balance is insufficient to reimburse the Owner for any amount which the household owes under the lease for an assisted unit or residential space and the Owner has provided the household with the list required by paragraph (b)(3)(ii) of this section, the Owner may claim reimbursement from HUD for an amount not to exceed the lesser of:

(1) The amount owed the Owner, or

(2) One month's per unit operating cost, minus the amount of the household's security deposit balance. Any reimbursement under this section will be applied first toward any unpaid tenant payment due under the lease. No reimbursement may be claimed for any unpaid tenant payment for the period after termination of the tenancy. The Owner may be eligible for vacancy payments following a vacancy in accordance with the requirements of § 890.645.

(Approved by the Office of Management and Budget under control number 2502–0470.)

§ 890.640 Adjustment of utility allowances.

The Owner must submit an analysis of any utility allowances applicable in an independent living complex. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, when utility rate changes would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Owner must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Owner will promptly notify affected households and make a corresponding adjustment of the tenant payment and the amount of the project rental assistance payment.

§ 890.645 Conditions for receipt of vacancy payments for assisted units.

(a) *General.* Vacancy payments under the PRAC will not be made unless the conditions for receipt of these project rental assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit (or residential space in a group home) that is not leased as of the effective date of the PRAC, the Owner is entitled to vacancy payments in the amount of 50 percent of the per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy, if the Owner:

(1) Conducted marketing in accordance with § 890.600(a) and otherwise complied with § 890.600;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) *Vacancies after rent-up.* If an eligible household vacates an assisted unit (or residential space in a group home) the Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy if the Owner:

(1) Certifies that it did not cause the vacancy by violating the lease, the PRAC, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 890.600(a) (2) and (3) and § 890.645(b) (2) and (3); and

(4) For any vacancy resulting from the Owner's eviction of an eligible household, certifies that it has complied with § 890.630.

(d) *Prohibition of double compensation for vacancies.* If the Owner collects payments for vacancies from other sources (tenant payment, security deposits, payments under § 890.635(c), or governmental payments under other programs), the Owner shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed the approved per unit operating cost.

§ 890.650 HUD review.

HUD shall conduct periodic on-site management reviews of the Owner's compliance with the requirements of this part.

Dated: December 27, 1994.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–4889 Filed 3–1–95; 8:45 am]

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Part VII

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 290 and 886

Disposition of Multifamily Projects and HUD-Held Multifamily Mortgages; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 290 and 886

[Docket No. R–95–1753; FR–3715–I–01]

RIN 2502–AG30

Disposition of Multifamily Projects and HUD-Held Multifamily Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Department's multifamily property disposition regulations to incorporate statutory amendments affecting the management and disposition of HUD-owned properties and properties with delinquent HUD-held mortgages, and the sale of HUD-held multifamily mortgages.

DATES: Effective date: March 2, 1995.

Comments due date: May 1, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Faxed comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Frank Malone, Director, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, Room 6164, 451 7th Street SW, Washington, DC 20410. Telephone (202) 708–3555; TDD (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this interim rule were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and were assigned OMB control number 2502–0204 (expiration date: 9/30/96).

I. Introduction

On August 17, 1993 (58 FR 43708), the Department published a final rule amending its requirements for the management and disposition of HUD-owned multifamily housing projects. The regulation, at 24 CFR part 290, implemented HUD's statutory authority, contained in section 207(k) and (l) of the National Housing Act and in section 203 of the Housing and Community Development Amendments of 1978, to handle and dispose of such real property.

Section 203 was amended by section 181 of the Housing and Community Development Act of 1987 (1987 Act), section 1010 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (1988 Act), and section 579 of the National Affordable Housing Act of 1990 (NAHA). The final rule published on August 17, 1993 implemented the NAHA amendments.

Generally, the statutory amendments specified the type of assistance to be provided when the Department determines to preserve units as affordable low- and very low-income housing, and included certain projects with HUD-held mortgages within the scope of section 203. The Department has been carrying out its multifamily property disposition program and its servicing of delinquent HUD-held multifamily mortgages on a project-by-project basis in conformity with the requirements of section 203, as amended.

In the Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 102–233, approved April 11, 1994), section 203 was completely revised. This interim rule, in turn, completely revises 24 CFR part 290 to reflect the new statutory amendments.

Before turning to a discussion of specific details of the implementation of the revised section 203 in this interim rule, a general comment on the overall format of this interim rule is in order. HUD is attempting to implement this complex legislation in a manner that is more accessible and ''user friendly'' than the typical government regulation, with the goal of providing clear guidance within a legally binding context. The structure of the statute has been reorganized in the regulation to correspond more with the flow of the disposition process as it actually happens, from general, guiding principles, through notification requirements, plan development, and the various actions the Department will take to facilitate the disposition process. The section headings in this interim rule are posed in the form of questions, to invite a broader spectrum of users for the interim rule and to permit all of its users to scan it and identify more quickly their areas of concern. Certain portions of the interim rule, which present an extended series of requirements or alternatives, have been summarized with the use of tables that appear within the permanent text of the interim rule itself. These tables, covering the subjects of rents, notification requirements, methods of disposition, and actions to facilitate disposition, provide a shorthand overview of major portions of the interim rule that will permit users to comprehend the interim rule and the disposition process more easily. The tables are cross referenced to the sections of interim rule text that provide a fuller explication of the requirements. HUD specifically invites comments on whether the public finds such innovations to be helpful, and welcomes suggestions for additional innovations.

A discussion of the revisions to the multifamily property disposition program, organized section-by-section according to the amended section 203, follows.

II. Implementation of Amended Section 203

Section 203(a)—Goals

The goals of the interim rule, which provide the general guidelines within which HUD makes its determinations for the management or disposition of multifamily housing projects, are listed in section 203(a). They closely resemble the goals previously listed at 24 CFR 290.5, but include three new factors. Protecting the financial interests of the Federal Government, adhering to fair housing requirements, and disposing of projects in a manner consistent with local housing market conditions are now explicitly listed among the goals which are set forth in § 290.3 of this regulation.

Section 203(b)—Definitions

Several of the nine definitions included in this section are combined and otherwise modified in the interim rule at § 290.5. The Department believes that its modifications provide additional precision and simplify the structure of the interim rule. For example, the interim rule defines the term multifamily housing project as a subset, with references to specific statutory authorities, of *multifamily project,* which is defined in very broad terms to cover most non-single family projects insured or subject to a loan under one of HUD's statutory authorities, including such properties as hospitals, intermediate care facilities, and nursing homes. The actions the Department may take to facilitate disposition (i.e., the

assistance to be provided or the restrictions to be imposed) depend upon the type of multifamily housing project involved, and the statute provides definitions of *subsidized project, formerly subsidized project,* and *unsubsidized project,* for this purpose. The interim rule cuts back on the number of cross references necessary to determine what actions may be taken by combining the definitions for *subsidized* and *formerly subsidized* into a single definition of *subsidized project. Subsidized project* includes projects both before foreclosure and after HUD assumes ownership of the project, when the mortgage which governs the project has been extinguished. *Subsidized projects* and *unsubsidized projects* are the subsets within the category of *multifamily housing projects.*

Although section 203(b)(8) lists *market area* among the definitions, its meaning is left to the determination of the Department. The Department has determined that this is a term best defined on a case-by-case basis at the local level, particularly when the new goal of disposing of projects in a manner consistent with local housing market conditions is taken into consideration. The interim rule provides for the market area for a project to be defined by the local HUD Office, which would have the best grasp of local conditions, in terms of the area from which a multifamily housing project may reasonably be expected to draw a substantial number of its tenants.

The statute also permits HUD to define the term *useful life,* used to determine how long certain requirements will apply to a project. The Department has determined to define *useful life* as 20 years, the period adopted in the August 17, 1993 final rule for maintaining a project as rental or cooperative housing, but it may be more or less, as determined by the Department.

Section 203(c)—Disposition of Property

Section 203(c)(1) lists ''negotiated, competitive bid, or other basis'' as methods of disposition. The interim rule at § 290.30 lists the basic methods of disposition as: (1) Foreclosure sales, (2) sale of HUD-owned projects, and (3) transfer for use under other HUD programs.

Method (3) is taken from section 203(f), entitled ''Discretionary Assistance,'' where ''transfer for use under other HUD programs'' is listed as an action the Department may take to facilitate disposition. However, in the Department's analysis, a transfer is actually a method of disposition, rather than a form of assistance or restriction such as the other actions given in section 203(f).

The transfer option permits the Department, ''notwithstanding the provisions of subsection (e)'' (which lists the basic actions and the alternatives to the basic actions to facilitate disposition), to transfer a multifamily housing project for use as public housing or supportive housing, subject to any terms, conditions, and limitations determined to be appropriate by the Department. The disposition is complete upon the transfer.

Section 203(c) also lists the qualities of an eligible purchaser (incorporated in the interim rule at § 290.32); and requirements for an initial disposition plan and initial sales price (§ 290.34 of the interim rule). Section 203(c)(2)(D) requires the Department to obtain timely and appropriate input into disposition plans from the community and tenants. This requirement is stated in § 290.34, and is also laid out in more detail at § 290.26 in subpart C of the interim rule where the notification requirements are gathered. HUD views the requirement for community and tenant input into the disposition plan as a process similar to providing public notice and an opportunity for comment in rulemaking. Just as a proposed rule is published for comment, followed by consideration of the comments before a final rule is issued, HUD will make an initial disposition plan available to the community and tenants, consider the comments it receives, and then issue its final disposition plan.

A requirement for a pre-foreclosure notification is included in section 203(c)(3), which appears in subpart C of the interim rule as § 290.22.

Section 203(d)—Management and Maintenance of Properties

This subsection of the statute is the only one that explicitly addresses management and maintenance of HUD-owned projects, or projects where HUD is the mortgagee in possession (MIP). These provisions, which provide management standards and permit HUD to contract or require an owner to contract for management services, are basically identical to those in § 290.51 of the August 17, 1993 final rule, and are incorporated in this interim rule at §§ 290.10 (standards) and 290.12 (contracting), under subpart B, titled, ''Management Provisions.'' Also included in subpart B are provisions for determining occupancy (§ 290.14) and rental rates (§ 290.16) while a project is managed by HUD. These provisions are based largely on the August 17, 1993 final rule and, in general, provide that the requirements of the project's mortgage insurance program before HUD assumed management will continue to apply.

Actions to Facilitate Disposition

Section 203(e)—Required Assistance; Section 203(f)—Discretionary Assistance; Section 203(g)—Protection for Very Low-Income Tenants; Section 203(j)—Displacement of Tenants and Relocation Assistance

Sections 203 (e), (f), (g), and (j) are discussed together because of their close interrelationship. The actions the Department may take to facilitate disposition are the common subject matter of these sections. The regulation organizes the statutorily permitted actions into four categories: ''required,'' ''basic,'' ''alternatives to basic,'' and ''additional.'' The table which immediately precedes subpart E provides an overview of these assistance and restrictions provisions.

Section 203(e) is divided into three sections, each delineating actions that the statute requires HUD to take separately, or in combination with each other or with actions under section 203(f). These actions are the assistance that may be provided or the restrictions (mainly to preserve affordability) that may be imposed. The basic actions are established by section 203(e)(1), which identifies the units in subsidized projects and unsubsidized projects that are to receive project-based Section 8 assistance or that are to be subject to use or rent restrictions. The alternatives to these basic actions appear in: (1) Section 203(e)(1)(C), which permits project-based Section 8 assistance and/or use and rent restrictions in unsubsidized projects to be substituted for the ''basic'' project-based Section 8 assistance in subsidized projects; (2) section 203(e)(2), which permits tenant-based Section 8 assistance to be provided to tenants instead of the project-based Section 8 assistance required under (e)(1); and (3) section 203(e)(3), which provides that the additional actions listed in section 203(f) may be used as long as, first, affordability use and rent restrictions are imposed on units that otherwise would have received the basic project-based Section 8 assistance under (e)(1), and second, very low-income tenants in units that otherwise would have received project-based Section 8 assistance under (e)(1) receive tenant-based Section 8 assistance.

Section 203(f) then lists the additional actions that may be used in subsidized and unsubsidized projects. Included by this interim rule in the category of additional actions are provisions taken from the August 17, 1993 final rule.

These provisions, entitled ''determination not to preserve,'' are included to provide criteria under which the Department will take the action of a determination not to preserve a project, or a part of a project, as affordable rental or cooperative housing, resulting primarily in demolition.

In addition to these basic, alternative, and additional categories of actions is the category of required actions. Section 203(g) provides for required assistance for very-low income tenants, and 203(j) provides for required displacement assistance. The displacement assistance requirements in this interim rule are based upon the requirements of the August 17, 1993 final rule. An action from the August 17, 1993 final rule is also included as required, the nondiscrimination against Section 8 certificate holders and voucher holders provisions of section 183(c) of the Housing and Community Development Act of 1987.

The interim rule organizes this complex system of actions to facilitate a disposition according to the type of project involved in a disposition—separate subparts address which actions are applicable to all multifamily housing projects, or to subsidized projects, or to unsubsidized projects, as follows. Subpart E contains the required actions applicable to all multifamily housing projects under sections 203 (g) and (j), as well as the nondiscrimination requirements of section 183(c) of the Housing and Community Development Act of 1987. Subpart F contains the basic and alternative actions applicable to subsidized projects under section 203(e), with a reference to the additional section 203(f) actions listed in subpart H. Subpart G contains the same information for unsubsidized projects as subpart F does for subsidized projects. Subpart H lists the additional actions under 203(f) that are applicable to all multifamily housing projects. All of the actions to facilitate disposition are set out in abbreviated form in a table that precedes subpart E, to permit users of this interim rule to follow more easily the options for assistance and restrictions that would apply to a particular project.

Section 203(h)—Contract Requirements

This section states the contract requirements applicable to project-based Section 8 assistance provided in accordance with a disposition. These requirements are implemented by revising the appropriate Section 8 regulations at 24 CFR 886.310 and 886.311.

Section 203(i)—Right of First Refusal for Local and State Government Agencies

This right of first refusal provision is included among the notification requirements in subpart C as § 290.24.

III. Sale of HUD-Held Multifamily Mortgages

On September 22, 1994 (59 FR 48726), the Department published a final rule that amended 24 CFR part 290 to set forth the basic policies and procedures that govern the disposition of HUD-held multifamily project mortgages. This final rule implemented a proposed rule published on April 13, 1994 (59 FR 17500) and also incorporated amendments made by the MHPDRA. The provisions of the mortgage sale final rule are included in this interim rule as subpart I, with only slight modifications to conform to the new format of this interim rule.

IV. Other Amendments in This Interim Rule

Section 101(d) of the MHPDRA amended the definition of *owner* under the United States Housing Act of 1937 to include ''an Agency of the Federal Government.'' The purpose and effect of this amendment is to permit HUD to collect Section 8 rental payments when it owns or manages a project. The conforming change to the definition of *owner* is made in 24 CFR 886.302.

The definition of *eligible project or project* in 24 CFR 886.302 is also amended to include a multifamily housing project under 24 CFR part 290.

Section 886.319 is amended to conform to § 886.120 and state explicitly that HUD may contract for the administration of its Section 8 contract functions.

V. Other Matters

Any assistance made available to a purchaser under this interim rule, whether rental or other financial assistance, will be subject to scrutiny under section 102(d) of the HUD Reform Act, insofar as that statutory provision has been implemented by guidelines issued by the Office of Housing under 24 CFR part 12, subpart D (see, *e.g.*, a **Federal Register** Notice published April 9, 1991 (56 FR 14436) entitled ''Administrative Guidelines; Limitations on Combining Other Government Assistance with HUD Housing Assistance'').

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12866

This interim rule has been reviewed and approved by the Office of Management and Budget in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the interim rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Flexibility Act

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. These revisions to the policies governing the management and disposition of HUD-owned multifamily housing projects should not affect the ability of small entities, relative to larger entities, to bid for and acquire projects that HUD determines to sell.

Executive Order 12612, Federalism

HUD has determined, in accordance with Executive Order 12612, Federalism, that this interim rule will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. While the interim rule would impose terms and conditions on States that acquire projects under this interim rule, that is clearly the intent of the authorizing legislation, and therefore no further review is necessary or appropriate.

Executive Order 12606, the Family

HUD has determined that this interim rule will not have a significant impact on family formation, maintenance, and general well-being within the meaning of Executive Order 12606, The Family, because it does not affect the eligibility of families for admission into multifamily housing projects that are subject to this rulemaking.

Justification for Interim Rulemaking

This publication of this interim rule for effect upon issuance is required by MHPDRA section 101(f).

Regulatory Agenda

This interim rule was listed as item number 1802 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57657) under Executive Order 12866 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number and title is 14.156, Lower Income Housing Assistance Program (Section 8).

List of Subjects

24 CFR Part 290

Low and moderate-income housing, Mortgage insurance.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, part 290 of chapter II and part 886 of chapter VIII of title 24 of the Code of Federal Regulations, are amended as follows:

1. Part 290 is revised to read as follows:

PART 290—DISPOSITION OF MULTIFAMILY PROJECTS AND SALE OF HUD-HELD MULTIFAMILY MORTGAGES

Subpart A—General Provisions

Subpart B—Management and Maintenance Provisions

Subpart C—Notification Requirements

Subpart D—Disposition Procedures

Subpart E—All Multifamily Housing Projects—Required Actions

Subpart F—Subsidized Projects—Basic and Alternative Actions to Facilitate Disposition

Subpart G—Unsubsidized Projects—Basic and Alternative Actions to Facilitate Disposition

Subpart H—All Multifamily Housing Projects—Additional Actions to Facilitate Disposition

Subpart I—Sale of HUD-Held Multifamily Mortgages

Authority: 12 U.S.C. 1701z–11, 1701z–12, 1713, 1715b, 1715z–1b; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 290.1 What subjects does this regulation cover?

(a) Except as provided in paragraph (b) of this section, this part applies to the sale of multifamily projects which are or were, before being acquired by the Department, assisted or had a mortgage insured under the National Housing Act, or which were subject to a loan or a capital advance under Section 202 of the Housing Act of 1959. Subpart I of this part applies to the sale of HUD-held multifamily mortgages.

(b) This part does not apply to multifamily projects being foreclosed by HUD for which the decision to foreclose has been made before the effective date of this part, nor to HUD-owned projects where the initial disposition program has been approved before the effective date of this part. For such projects, the procedures in the regulations at 24 CFR part 290 in effect immediately prior to the effective date of this regulation apply, unless HUD determines, on a case-by-case basis, to apply the new regulations.

(c) This part applies to the sale of multifamily projects which are or were, before being acquired by the Department, assisted or insured under the National Housing Act, or which were subject to a loan under section 202 of the Housing Act of 1959. It also applies to the sale of certain loans and mortgages, and to the management of certain multifamily properties.

§ 290.3 What are the goals of this regulation?

(a) The goals of this part are to provide for the management and

disposition of HUD-owned multifamily projects, and multifamily projects subject to HUD-held mortgages, in a manner that:

(1) Is consistent with the National Housing Act, section 203 of the Housing and Community Development Amendments of 1978, and other relevant statutes;

(2) Will protect the financial interests of the Federal Government; and

(3) Will, in the least costly fashion among reasonable available alternatives, address the goals of:

(i) Preserving certain housing so that it can remain available to and affordable by low-income persons;

(ii) Preserving and revitalizing residential neighborhoods;

(iii) Maintaining the existing housing stock in a decent, safe, and sanitary condition;

(iv) Minimizing the involuntary displacement of tenants;

(v) Maintaining housing for the purpose of providing rental housing, cooperative housing, and homeownership opportunities for low-income persons;

(vi) Minimizing the need to demolish multifamily housing projects;

(vii) Adhering to fair housing requirements; and

(viii) Disposing of such projects in a manner consistent with local housing market conditions.

(b) The goals of this part, with respect to HUD-held mortgages, are to sell such mortgages in a manner that:

(1) Reduces losses to the FHA fund;

(2) Decreases HUD's inventory of project mortgages;

(3) Improves the servicing of these mortgages; and

(4) Improves the rental services provided by properties securing HUD-insured and HUD-held mortgages.

(c) *Competing goals.* In determining the manner in which a project is to be managed and disposed of, HUD may balance competing goals relating to individual projects in a manner that will further the purposes of this part.

§ 290.5 What definitions apply in this regulation?

The following definitions apply to this part:

Affordable means, with respect to a unit of a multifamily housing project:

(1) For a unit occupied by a very-low income family, the unit rent does not exceed 30 percent of 50 percent of the area median income (not the income of the family), as determined by the Department, with adjustments for smaller and larger families; or

(2) For a unit occupied by a low-income family other than a very low-income family, the unit rent does not exceed 30 percent of 80 percent of the area median income (not the income of the family), as determined by the Department, with adjustments for smaller and larger families; or

(3) The unit, or the family residing in the unit, is receiving assistance under Section 8 of the United States Housing Act of 1937.

Cooperative means a nonprofit, limited equity, or consumer cooperative as defined under 24 CFR part 213. It may include mutual housing associations.

Department means the United States Department of Housing and Urban Development, or HUD.

HUD-owned project means a multifamily project that has been acquired by HUD.

Low-income family means a low-income family as defined at 24 CFR part 813.

Market area means the area from which a multifamily housing project may reasonably be expected to draw a substantial number of its tenants, as determined by HUD, taking into consideration the knowledge of the HUD office with jurisdiction over the project of the local real estate market and HUD's project underwriting experience. Submarkets may be used in large, complex metropolitan areas.

Multifamily housing project means a multifamily project that is or was insured under sections 207, 213, 220, 221(d)(3) 221(d)(4), 223(f), 231, 236, or 608 of the National Housing Act (12 U.S.C. 1701 *et seq.*); or is or was subject to a loan under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q); or was a Real Estate Owned (REO) multifamily project transferred by the Government National Mortgage Association to the Department. Multifamily housing project does not include projects consisting of one to eleven units insured under section 220(d)(3)(A) of the National Housing Act (12 U.S.C. 1715k); or mobile home parks under section 207(m) of that Act (12 U.S.C. 1713); or vacant land; or property covered by a homeownership program approved under the Homeownership and Opportunity for People Everywhere (''HOPE'') program.

Multifamily project means a project consisting of five or more units that has or had a mortgage (even if subordinate to other mortgages) insured under the National Housing Act or is or was subject to a loan under section 202 of the Housing Act of 1959, or a hospital, intermediate care facility, nursing home, group practice facility, or board and care facility that has or had a mortgage insured, or is or was subject to a loan under, these authorities. Multifamily project does not include projects consisting of one to eleven units insured under section 220(d)(3)(A) of the National Housing Act, which are classified as single family homes.

Nonprofit organization means a corporation or association organized for purposes other than making a profit or gain for itself. Stockholders or trustees do not share in profits or losses. Profits are used to accomplish the charitable, humanitarian, or educational purposes of the corporation.

Preexisting tenant means a family that resides in a unit in a multifamily housing project immediately before the project is acquired under this part by a purchaser other than the Department.

Project-based assistance means assistance that is attached to a structure.

Subsidized mortgage means a mortgage, including a purchase money mortgage, on a subsidized project.

Subsidized project means a multifamily housing project that is receiving, or immediately before its mortgage was foreclosed by HUD or the project was acquired by HUD, pursuant to this regulation, was receiving any of the following types of assistance:

(1) Below market interest rate mortgage insurance under the proviso of section 221(d)(5) of the National Housing Act (12 U.S.C. 1715l) (hereinafter, a BMIR project);

(2) Interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act (hereinafter, a 236 project);

(3) Direct loans made under section 202 of the Housing Act of 1959 (hereinafter, a 202 project);

(4) Assistance, to more than 50 percent of the units in the project, in the form of:

(i) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (hereinafter, Rent Supp);

(ii) Additional assistance payments under section 236(f)(2) of the National Housing Act (hereinafter, RAP);

(iii) Housing assistance payments under section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975) (hereinafter, Sec. 23); or

(iv) Housing assistance payments under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f note) (excluding payments of tenant-based Section 8 assistance) (hereinafter, project-based Section 8 assistance).

Sufficient habitable, affordable, rental housing is available means that the HUD office with jurisdiction determines that there is an adequate supply of habitable, affordable housing for low-

and very low-income families available in the market area. Submarkets, consisting of portions of units of general local government, may be used in large, complex metropolitan areas. Local housing markets having an adequate supply of standard-quality rental housing would include housing markets in which the supply of rental housing available and in production is adequate to meet the anticipated demand (*e.g.*, the housing market is balanced), as well as those in which there is an excess supply of rental housing (*e.g.*, the housing market is soft). Rental markets that do not have an adequate supply (*e.g.*, tight markets) are characterized by low rental vacancy rates, low levels of production and turnover of rental housing, and, usually, by high levels of rent inflation. HUD will make the determination of whether sufficient habitable, affordable, rental housing is available using established market analysis techniques, and will consider information that demonstrates:

(1) The rental housing vacancy rate is at a low level relative to the rate required for a balanced market, typically a four percent vacancy rate; except that a rate lower than four percent may be considered in unusual circumstances if it can be demonstrated that there is an adequate supply of affordable housing for low-income families;

(2) The number of rental housing units being produced on an annual basis is not large enough to satisfy demand arising from the increase in households, or, in markets where there is little or no growth, evidence that the number of additional rental units being supplied is not sufficient to meet the demand arising from net losses to the available inventory and the inadequate supply of rental housing has inhibited growth;

(3) The shortage of housing is resulting in rent increases that exceed normal increases commensurate with the costs of operating rental housing;

(4) A significant number, or proportion, of the households holding Section 8 certificates or rental vouchers are unable to find adequate housing because of the shortage of rental housing, including PHA data showing a lower than average percentage of units under lease and a longer than average time required to find units.

Tenant-based assistance means rental assistance that is not attached to a structure.

Unit of general local government means a city, town, township, county, parish, village, or other general purpose political subdivision of a State.

Unsubsidized mortgage means any HUD-held multifamily mortgage that is not a subsidized mortgage.

Unsubsidized project means a multifamily housing project that is not a subsidized project.

URA means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655).

Useful life means, generally, twenty years, but it may be more or less, as determined by the Department.

Very low-income family means a very low-income family as defined at 24 CFR part 813.

§ 290.7 May any of the provisions of this regulation be waived?

The Assistant Secretary for Housing may waive any provision of this part, subject only to statutory limitations. Each waiver must be in writing, and must be supported by documentation of the facts and reasons which formed the basis for the waiver. HUD will publish a **Federal Register** notice informing the public of all waivers granted under this section in accordance with the HUD Reform Act of 1989 and HUD policies regarding publication of waivers.

Subpart B—Management and Maintenance Provisions

§ 290.10 What maintenance and management standards apply to multifamily housing projects?

(a) *Scope.* The provisions of this section apply to any multifamily housing project:

(1) That is HUD-owned;

(2) For which HUD is mortgagee-in-possession; or

(3) That is subject to a mortgage held by HUD.

(b) *Maintenance and management standards.* With respect to projects within the scope of this section, HUD or the owner, as appropriate, shall:

(1) To the greatest extent possible, maintain all occupied projects in a decent, safe, and sanitary condition, and in compliance with any standards established by the Department and under applicable State or local laws, rules, ordinances, or regulations relating to the accessibility and physical condition of the housing;

(2) Maintain full occupancy;

(3) Maintain projects for purposes of providing rental or cooperative housing; and

(4) Manage projects in accordance with the requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR parts 100 et al, which prohibit discrimination in the sale or rental of housing and in related transactions on the basis of race, color, religion, sex, national origin, handicap, or familial status; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 that prohibit discrimination against disabled individuals in Federally-assisted activities, and 24 CFR part 9, which prohibit discrimination against disabled individuals in Federally-conducted activities; Title VI of the Civil Rights Act of 1964 and implementing regulations at 24 CFR part 1, which prohibit discrimination based on race, color, or national origin in programs receiving Federal financial assistance; the Age Discrimination Act of 1975 and implementing regulations at 24 CFR part 146, which prohibit discrimination based on age in programs receiving Federal financial assistance; and Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107.

§ 290.12 How may HUD contract for management services, or require the owner of a multifamily project to contract for management services?

(a) *Scope.* The provisions of this section apply to any multifamily housing project:

(1) That is HUD-owned;

(2) For which HUD is mortgagee-in-possession; or

(3) That is subject to a mortgage held by HUD.

(b) *Contracting for management services.* (1) With respect to projects within the scope of this section, HUD may, or may require the owner to, contract for management services for the project with for-profit and nonprofit entities and public agencies, including public housing agencies, on a negotiated, competitive bid, or other basis, at a price determined by HUD to be reasonable, with a manager determined by HUD to be capable of:

(i) Implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and maintenance expenses to ensure that the project will remain in a decent, safe, and sanitary condition, and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the accessibility and physical condition of the housing, and any such standards established by HUD;

(ii) Responding to the needs of tenants and working cooperatively with tenant organizations;

(iii) Providing adequate organizational, staff, and financial resources to the project; and

(iv) Meeting such other requirements as HUD may determine to be necessary or appropriate.

(2) HUD will conduct outreach efforts to minority-owned and female-owned businesses to become managers of the HUD-owned projects covered by this section, in accordance with Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprises), Executive Order 12432 (Minority Business Enterprise Development), and Executive Order 12138 (National Women's Business Enterprise Policy).

§ 290.14 What occupancy requirements apply under this regulation?

(a) *Multifamily housing project that is HUD-owned or for which HUD is mortgagee-in-possession.* Occupancy in a multifamily housing project that is HUD-owned or for which HUD is mortgagee-in-possession shall be available on a basis that is comparable to the occupancy requirements that applied to the project immediately before HUD acquired the project or became mortgagee-in-possession, except that preference shall be given to tenants of other HUD-owned multifamily housing projects who are eligible for assistance in accordance with the displacement and relocation provisions at § 290.42.

(b) *Evictions.* Eviction from a HUD-owned multifamily housing project is governed by 24 CFR part 247, subpart B.

(c) *Threat to health and safety.* Whenever HUD determines that there is an immediate threat to the health and safety of the tenants, HUD may require the tenants to vacate the premises and shall provide temporary relocation benefits as provided in § 290.42 to tenants required to vacate the premises.

PROJECT RENTS WHILE HUD IS MIP OR OWNER

Unit rents	*Unit rents* set in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program while HUD is mortgagee-in-possession (MIP), or in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program in effect immediately before HUD became the owner of the project (§ 290.16(a)).
Rents payable by tenants	1. *Tenant rent.* Rent the tenant pays will be based on the income certification and the rent payment requirements of the project's mortgage insurance or direct loan program in effect while HUD is MIP or immediately before HUD became the owner of the project (§ 290.16(b)(1)). 2. *Rent when tenant does not certify income.* If a tenant does not certify income, the tenant must pay the unit rent (§ 290.16(b)(1)). 3. *Utility allowance.* For a tenant whose rent is based on a percentage of adjusted income, HUD will use a utility allowance to reduce the rent (§ 290.16(b)(2)). 4. *Project viability.* HUD may adjust the rent to promote project viability (§ 290.16(b)(3)). 5. *Tenants with rental vouchers or certificates.* Tenant pays rent in accordance with policies and procedures governing such assistance (§ 290.16(b)(4)).

§ 290.16 How will rental rates be set when HUD is mortgagee-in-possession (MIP) or owner of a multifamily housing project?

Because of the subsidies involved in making multifamily housing projects affordable, the setting of rents involves two steps: first, establishing the rent on a unit that will be paid to the owner, and second, determining the rent that the tenant pays (with the difference made up by a subsidy), using a number of procedures to obtain income verification and notify tenants of changes in rent. These procedures are explained below.

(a) *Setting unit rents.* Except as modified by this section, for a property where HUD is mortgagee-in-possession (MIP), HUD will set unit rents in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program; or for a property owned by HUD, rents will be set in accordance with the rent setting requirements of the project's mortgage insurance or direct loan program in effect immediately before HUD became the owner of the project.

(b) *Setting rents payable by tenants—(1) Tenant rent.* The rent the tenant pays will be based on the income certification and the rent payment requirements of the project's mortgage insurance or direct loan program in effect while HUD is MIP or immediately before HUD became the owner of the project, as affected by any of the factors in paragraphs (b)(2) through (b)(4) of this section. However, if a tenant does not certify income as required by this section, the tenant must pay the unit rent as determined under the rent setting requirements in paragraph (a) of this section.

(2) *Utility allowance.* For a tenant whose rent is based on a percentage of adjusted income (except for rental voucher or rental certificate holders), if the cost of utilities (except telephone) and other housing services for the unit is the responsibility of the tenant to pay directly to the provider of the utility or service, HUD will deduct from the rent to be paid by the tenant to HUD a utility allowance, which is an amount equal to HUD's estimate of the monthly costs of a reasonable consumption of the utilities and other services for the unit for an energy-conservative household of modest circumstances consistent with the requirement of a safe, sanitary, and healthful living environment. If the utility allowance exceeds the percentage of the tenant's adjusted income payable as rent, HUD will pay the difference between the amount payable as rent and the utility allowance to the tenant or, with the consent of the tenant and the utility company, either jointly to the tenant and the utility company or directly to the utility company.

(3) *Rent adjustments for project viability.* For a HUD-owned project, HUD may adjust the rent provided for in paragraphs (b)(1) or (b)(2) of this section if necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy.

(4) *Tenants who are rental voucher or rental certificate holders.* Tenants assisted with rental vouchers or certificates certify their income to the public housing agency (PHA) administering the assistance, and pay rent pursuant to the policies and procedures governing such assistance.

(c) *Income verification and rent notification procedures.*

(1) *Income certification by tenants—(i) In subsidized projects.* (A) For families residing in subsidized projects, when HUD becomes MIP or owner, HUD will request an income certification from each family as soon as practicable after HUD initially assumes management, unless the family's income has been examined by the owner or by HUD not more than four months before HUD's assumption of management.

(B) For each family applying for admission to subsidized projects, HUD will request an income certification to determine the family's eligibility for a subsidized rent, and (if the rent is based on a percentage of adjusted income) the

family's subsidized rent, in accordance with part 813 of this title.

(ii) *In unsubsidized projects.* (A) For tenants in occupancy when HUD becomes mortgagee-in-possession or owner of an unsubsidized project, HUD may request an income certification from families who are not paying a subsidized rent.

(B) For families applying for admission to such projects, HUD will request sufficient information for income verification to determine the family's ability to pay the unit rent.

(2) *Notice of increases in the amount of rent payable.* Whenever HUD proposes an increase in rents in a HUD-owned multifamily project or a project where HUD is mortgagee-in-possession, HUD will provide tenants 30 days notice of the proposed changes and an opportunity to review and comment on the new rent and supporting documentation. After HUD considers the tenants' comments and has made a decision with respect to its proposed rent change, HUD shall notify the tenants of its decision, with the reasons for the decision. A tenant in occupancy before the effective date of any revised rental rate must be given 30 days notice of the revised rate, and any change in the tenant's rent is subject to the terms of an existing lease. Notices to each tenant must be personally delivered or sent by first class mail. General notices to all tenants must be posted in the project office and in appropriate conspicuous and accessible locations around the project.

(3) *Disclosure and verification of Social Security numbers.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the disclosure and verification of Social Security Numbers, as provided by part 200, subpart T, of this title.

(4) *Signing of consent forms for income verification.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 200, subpart V, of this title. (Approved by Office of Management and Budget under control number 2502–0204.)

PRE-DISPOSITION NOTIFICATION REQUIREMENTS

Pre-foreclosure (§ 290.22) ..	1. *Timing.* Not later than 60 days before foreclosure on any mortgage. 2. *Recipients.* (i) Tenants of the project, and (ii) The unit of general local government in which the project is located. 3. *Contents.* (i) General terms and conditions concerning the sale, future use, and operation of the project that HUD proposes to impose; and, (ii) Whether temporary or permanent relocation is anticipated, and, if so, available displacement and relocation assistance.
Right of first refusal (§ 290.24).	1. *Timing.* Not later than 30 days after HUD acquires title to a multifamily housing project. 2. *Recipients.* (i) The appropriate unit of general local government; (ii) Public housing agencies in the project's market area; (iii) The State agency or agencies designated to receive such notice by the chief executive officer of the State in which the project is located. 3. *Contents.* (i) Description of the project; (ii) Invitation to recipients to make bona fide offers to purchase the project; (iii) Offer of right of first refusal for period of up to 90 days; (iv) Method by which the recipient may respond to HUD.
Notice to tenants and the community (§ 290.26).	1. *Timing.* Not later than 60 days after HUD acquires title to a multifamily housing project. 2. *Recipients.* (i) To the tenants of the project; (ii) To the unit of general local government in which the project is located; and (iii) To the community in which the project is located. 3. *Contents.* (i) Description of the project; (ii) Proposed general terms and conditions concerning the sale, future use, and operation of the project; (iii) Invitation for tenants and their organizations, units of general local government, and other public or nonprofit entities to submit comments on the disposition plan, and/or proposals for disposition which will be considered by HUD in making its property disposition determination.

Subpart C—Notification Requirements

§ 290.20 How will HUD provide the notifications that are required under this regulation?

(a) *In general.* HUD may combine two or more of the notifications required by this subpart, as appropriate, to simplify the disposition process.

(b) *Methods of notification— (1) To tenants.* The notices required to be made to tenants under this subpart will be delivered to each unit in the project, or sent to each unit by first class mail. Where HUD is mortgagee-in-possession or owner of a project, the notice will also be posted in the project office and in appropriate conspicuous and accessible locations around the project.

(2) *To the unit of general local government.* The notice required to be made to a unit of general local government under this section will be sent to the chief executive officer of the unit of general local government by first class mail. For purposes of receiving or sending any notices or information under this subpart, the unit of general local government is its chief executive officer, or the person designated by the chief executive officer to receive or send the notice or information.

(3) *To the community or any other party.* HUD will consult with tenants and their organizations, officials of units of general local government, and other entities as HUD determines to be appropriate, to identify community recipients of any notification required by this subpart. Any notice required to be made to any party other than a tenant

or a unit of general local government will be sent by first class mail.

§ 290.22 What notification must be given before foreclosure?

(a) *Timing and recipients of notice.* Not later than 60 days before foreclosing on any mortgage held by the Department on any multifamily housing project, HUD will provide notice of the proposed foreclosure sale to the tenants of the project and to the unit of general local government in which the project is located.

(b) *Contents of notice.* The notice will describe the general terms and conditions concerning the sale, future use, and operation of the project that HUD proposes to impose on a purchaser other than HUD through the foreclosure. The notice will also state whether temporary or permanent relocation is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, and, if so, the levels of displacement and relocation assistance available under § 290.42.

§ 290.24 Who has a right of first refusal for properties that HUD is selling, and what kind of notice must HUD provide?

(a) *Timing and recipients of notice.* Not later than 30 days after HUD acquires title to a multifamily housing project, HUD will provide notice of the right of first refusal to the appropriate unit of general local government, as well as public housing agencies in the project's market area, and the State agency or agencies designated to receive such notice by the chief executive officer of the State in which the project is located.

(b) *Content of notice.* The notice will describe the project acquired by HUD, and contain an invitation to recipients to make bona fide offers to purchase the project. The notice will state:

(1) That for a period specified in the notice, not to exceed 90 days from the time the notification is made, HUD will not sell or offer to sell the project other than to a recipient of the notice, unless the recipients notify HUD sooner that they will not make an offer to purchase the project;

(2) That if a recipient expresses interest within the specified period in acquiring the project, HUD will consult with the interested parties in the preparation of the disposition plan and the terms and conditions of the sale of the project. HUD will accept a bona fide offer to purchase the project if the offer complies with the terms and conditions of the disposition plan for the project, or is otherwise acceptable to HUD;

(3) The method by which the recipient may respond to HUD with an expression of interest or a bona fide offer, or by which the recipient may notify HUD that an offer will not be made.

§ 290.26 What kind of notice must HUD provide to tenants and the community when HUD is selling a project?

(a) *Timing and recipients of notice.* Not later than 30 days after HUD acquires title to a multifamily housing project, HUD will provide notice of HUD's acquisition and proposed disposition of the project to the tenants of the project, to the unit of general local government, and to the community in which the project is located.

(b) *Content of notice.* The notice will describe the project acquired by HUD, and the general terms and conditions concerning the sale, future use, and operation of the project as proposed by HUD. The notice will, as appropriate, state:

(1) HUD has acquired the project.

(2) During HUD's ownership, HUD will, to the extent feasible, assure that the project is maintained in a decent, safe, and sanitary condition.

(3) HUD is developing a final disposition plan for the project.

(4) HUD normally seeks to sell HUD-owned projects as rapidly as possible.

(5) HUD's interest in learning of tenant, community, and local government plans and capacity for the acquisition of the project for use as rental or cooperative housing.

(6) HUD's final determination of the terms and conditions to be imposed on the disposition of the project will not be made until after HUD considers the comments received from tenants, the community, and the unit of general local government within the specified comment period.

(7) A brief description of a proposed manner of disposition of the project.

(8) A description of the pending notice of the right of first refusal to purchase the project made under § 290.24.

(9) That alternative uses of units in the project may be part of the project's disposition, and that:

(i) Some of the units in the project may be made available for uses other than rental or cooperative uses, including low-income homeownership opportunities, or community space, office space for tenant or housing-related service providers or security programs, or small business uses, if such uses benefit the tenants of the project;

(ii) Some of the units in the project may be used in any manner, if the Department and the unit of general local government or area-wide governing body determine that such use will further fair housing, community development, or neighborhood revitalization goals;

(iii) Such alternative uses of units may only take place if:

(A) Tenant-based Section 8 rental assistance is made available to each eligible family residing in the project that is displaced as a result of such actions; and

(B) The Department determines that sufficient habitable, affordable rental housing is available in the market area in which the project is located to ensure use of such assistance.

(10) That any very low-income family who is a preexisting tenant of the project who upon disposition of the project would be required to pay rent in an amount in excess of 30 percent of the adjusted income of the family:

(i) For a period of 2 years beginning upon the date of the acquisition of the project under the disposition, the rent for the unit occupied by the family may not be increased above the rent charged immediately before the acquisition; and

(ii) The family shall be considered displaced for purposes of the preferences for assistance under sections 6(c)(4)(A)(i), 8(d)(1)(A)(i), and 8(o)(3)(B) of the United States Housing Act of 1937.

(11) Whether temporary or permanent relocation is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, and, if so, the levels of relocation assistance available under § 290.42.

(12) That tenants and their organizations, units of general local government, and other public or nonprofit entities are invited to submit comments on the disposition plan, and/or proposals (*e.g.*, expressions of interest to convert the project to a cooperative or other form of resident-controlled ownership, or other resident initiative), which will be considered by HUD in making its property disposition determination.

(13) That comments must be submitted to HUD within 30 days of receipt of the notice.

(14) That the full disposition recommendation and analysis and other supporting information will be available for inspection and copying at the HUD field office.

METHODS OF DISPOSITION

Foreclosure sales. (§ 290.30(a)).	HUD may dispose of a project at a foreclosure sale: 1. In accordance with the Multifamily Mortgage Foreclosure Act, or 2. In accordance with other Federal or State foreclosure law.
Sale of HUD-owned projects. (§ 290.30(b)).	HUD may sell a HUD-owned project using any of the following procedures: 1. Competitive bid; 2. Auction; 3. Request for proposals; 4. Negotiated sale, as permitted under § 290.30(b)(1) and (2); or 5. Any other method, on such terms as HUD considers appropriate.
Transfer for use under other HUD programs. (§ 290.30(c)).	HUD, under an agreement, may transfer a multifamily housing project: 1. To a public housing agency (PHA) for use of the project as public housing; or 2. To an entity eligible to own or operate 202 or 811 supportive housing.

Subpart D—Disposition Procedures

§ 290.30 What are the different methods that may be used for the disposition of a multifamily housing project?

HUD may use any of the following methods, as appropriate, for the disposition of a multifamily housing project:

(a) *Foreclosure sales.* Foreclosure sales will be conducted, at HUD's discretion, in accordance with the Multifamily Mortgage Foreclosure Act, or other Federal or State foreclosure law, on such terms as HUD considers appropriate to further the purpose stated in § 290.3.

(b) *Sale of HUD-owned projects.* HUD may dispose of a HUD-owned multifamily project by competitive bid, auction, request for proposals, or other method, on such terms as HUD considers appropriate to further the purpose stated in § 290.3. When HUD conducts a negotiated sale involving the disposition of a project to a person or entity without a public offering, the following provisions apply:

(1) HUD may negotiate the sale of any project to an agency of the Federal, State, or local government.

(2) When HUD determines that a purchaser can demonstrate the capacity to own and operate a project in accordance with standards set by HUD, and/or a competitive offering will not generate offers of equal merit from qualified purchasers, HUD may approve a negotiated sale of a subsidized project to:

(i) A resident organization wishing to convert the project to a nonprofit or limited equity cooperative;

(ii) A cooperative (*e.g.*, nonprofit limited equity, consumer cooperative, mutual housing organization) with demonstrated experience in the operation of nonprofit (and preferably low- to moderate-income) housing;

(iii) A nonprofit entity that will continue to operate the project as low- to moderate-income rental housing and whose governing board is composed of project residents;

(iv) A State or local governmental entity with the demonstrated capacity to acquire, manage, and maintain the project as rental or cooperative housing available to and affordable by low- and moderate-income residents;

(v) A State or local governmental or nonprofit entity with the demonstrated capacity to acquire, manage, and maintain the project as a shelter for the homeless or other public purpose, generally when the project is vacant or has minimal occupancy and is not needed in the area for continued use as rental housing for the elderly or families; or

(vi) Other nonprofit organizations.

(c) *Transfer for use under other HUD programs.*—(1) *In general.* Subject only to the requirements of an agreement under paragraph (c)(2) of this section, HUD may transfer a multifamily housing project:

(i) To a public housing agency (PHA) for use of the project as public housing; or

(ii) To an entity eligible to own or operate housing assisted under section 202 of the Housing Act of 1959 or under section 811 of the Cranston-Gonzalez National Affordable Housing Act for use as supportive housing under either of those sections.

(2) *Transfer agreement.* An agreement providing for the transfer of a project as described in paragraph (c)(1) of this section must:

(i) Contain such terms, conditions, and limitations as HUD determines to be appropriate, including requirements to ensure use of the project as public housing, supportive housing under section 202 of the Housing Act of 1959, or supportive housing under section 811 of the Cranston-Gonzalez National Affordable Housing Act, as applicable; and

(ii) Ensure that no tenant of the project will be displaced as a result of the transfer.

§ 290.32 What qualities does HUD look for in a purchaser?

(a) *Foreclosure sales.* HUD will dispose of a multifamily housing project through a foreclosure sale only to a purchaser that the Department determines is capable of implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Department.

(b) *HUD-owned multifamily housing projects.* Sales of HUD-owned multifamily housing projects may be made only to a purchaser determined by the Department to be capable of:

(1) Satisfying the conditions of the disposition plan developed under § 290.34 for the project;

(2) Implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition and in compliance with any standards under applicable State or local laws, rules, ordinances, or regulations relating to the physical condition of the housing and any such standards established by the Department;

(3) Responding to the needs of the tenants and working cooperatively with tenant organizations;

(4) Providing adequate organizational, staff, and financial resources to the project; and

(5) Meeting such other requirements as HUD may determine to be appropriate for the particular project.

§ 290.34 What kind of disposition plan will HUD prepare before selling a project?

(a) *In general.* Before disposing of a HUD-owned multifamily housing

project, HUD will develop an initial and a final disposition plan for the project that specifies the minimum terms and conditions for the disposition of the project, the sales price that is acceptable to HUD, and the assistance that HUD plans to make available to a prospective purchaser.

(b) *Market-wide plans.* In developing the disposition plan under this section for a HUD-owned multifamily housing project located in a market area in which at least 1 other HUD-owned multifamily housing project is located, HUD may coordinate the disposition of HUD-owned multifamily housing projects located within the same market area to the extent and in such a manner as the Department determines appropriate to carry out the goals under § 290.3.

(c) *Sales price.* The sales price in the disposition plan will be reasonably related to the intended use of the project after the sale, any rehabilitation requirements for the project, the rents for units in the project that can be supported by the market, the amount of rental assistance available for the project under Section 8 of the United States Housing Act of 1937, the occupancy profile of the project (including family size and income levels for tenant families), and any other factors that HUD considers appropriate.

(d) *Community and tenant input.* In developing the initial and final disposition plans, HUD will consider any timely input from officials of the unit of general local government affected, the community in which the project is situated, and the tenants of the project, including the comments received in response to the notice required by § 290.26. To obtain this input, HUD may provide technical assistance, directly or indirectly, and may use amounts available for technical assistance under the Emergency Low Income Housing Preservation Act of 1987, subtitle C of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, subtitle B of title IV of the Cranston-Gonzalez National Affordable Housing Act, or this part, for the provision of such technical assistance. Recipients of technical assistance funding under the provisions referred to in this subparagraph may provide technical assistance to the extent of such funding, notwithstanding the source of the funding.

(e) *Environmental requirements.* HUD will perform, and include in the final disposition plan, the environmental reviews required by 24 CFR part 50.

TABLE OF ACTIONS TO FACILITATE DISPOSITION

All Multifamily Housing Projects [Subpart E].	*Required Actions* 1. Displacement requirements (§ 290.42). 2. Very-low income preexisting tenant—2 year rent freeze if rent after disposition more than 30 percent of adjusted income (§ 290.44). 3. Nondiscrimination against Section 8 certificate holders and voucher holders (§ 290.46).
Subsidized Projects [Subpart F].	*Basic Actions* 1. Provide project-based Section 8 assistance to at least all units that, before acquisition or foreclosure, received: Rent Supp, RAP, Sec. 23, project-based Section 8 (§ 290.54(a)). 2. Vacancy in any assisted unit must be filled by a family that is eligible for the assistance (§ 290.54(b)). 3. Rent and use restrictions on BMIR, 236, or 202 subsidized project units that were not covered before acquisition or foreclosure by Rent Supp, RAP, Sec. 23, or project-based Section 8 (§ 290.54(c)). *Alternatives to Basic Actions* 1. Assistance to, or restrictions on, units in unsubsidized projects instead of assistance to units in subsidized projects (§ 290.56(a)). 2. Substitution of tenant-based Section 8 assistance to low-income families instead of Project-based assistance to units (§ 290.56(b)). 3. Use of the additional assistance and restrictions permitted in subpart H (§ 290.56(c)).
	Unsubsidized Projects [Subpart G] *Basic Actions* 1. Provide project-based Section 8 assistance for all units that, before acquisition or foreclosure, received assistance under: (i) The new construction and substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1983); (ii) The property disposition program under section 8(b) of such Act; (iii) The project-based certificate program under section 8 of such Act; (iv) The moderate rehabilitation program under section 8(e)(2) of such Act; (v) Section 23 of such Act (as in effect before January 1, 1975); (vi) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or (vii) Section 8 of the United States Housing Act of 1937, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965 (§ 290.64(a)). 2. Provide tenant-based Section 8 assistance to preexisting tenants of LMSA-assisted units (§ 290.64(b)). *Alternatives to Basic Actions* 1. Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units (§ 290.66(a)). 2. Use of the additional assistance and restrictions permitted in subpart H (§ 290.66(b)).
All Multifamily Housing Projects [Subpart H].	*Additional Actions* 1. Discounted sales price (§ 290.72). 2. Additional use and rent restrictions (§ 290.74). 3. Short-term loans (§ 290.76). 4. Up-front grants (§ 290.78). 5. Additional tenant-based assistance (§ 290.80). 6. Alternative uses (§ 290.82) 6. Rebuilding (§ 290.84). 7. Emergency assistance funds (§ 290.86). 8. Determination not to preserve (§ 290.88).

Subpart E—All Multifamily Housing Projects—Required Actions

§ 290.40 Are there any required actions that must be taken in the disposition of all multifamily housing projects?

Yes, the requirements regarding tenants who are displaced (explained in § 290.42), unassisted very low-income tenants (explained in § 290.44), and nondiscrimination against Section 8 certificate holders and voucher holders (explained in § 290.46), apply in the disposition of all multifamily housing projects.

§ 290.42 What actions must be taken concerning tenants who are displaced by the disposition of a multifamily housing project?

(a) *Scope of section.* This section applies to all HUD-owned multifamily housing projects and all multifamily housing projects subject to HUD-held mortgages. When HUD is not the mortgagee-in-possession or owner, the owner of the project shall comply with this section, if HUD has authorized the demolition of, repairs to, or conversion of the use of the multifamily housing project.

(b) *Minimizing displacement.* Consistent with the other goals and objectives of this part, all reasonable steps shall be taken to minimize the displacement of persons (families, individuals, businesses, and nonprofit organizations) from a project covered by this part. If displacement or temporary relocation will occur in connection with the disposition of a project, HUD may require the purchaser of the project to provide assistance in accordance with this section.

(c) *Relocation assistance at non-URA levels.* Whenever the displacement of a residential tenant (family or individual) occurs in connection with the management or disposition of a multifamily project, but is not subject to paragraph (d) of this section (*e.g.*, occurs as a direct result of HUD repair or demolition of all or a part of a HUD-owned multifamily project or as a direct result of the foreclosure of a HUD-held mortgage on a multifamily housing project or sale of a HUD-owned project without federal financial assistance), the displaced tenant shall be eligible for the following relocation assistance:

(1) Advance written notice of the expected displacement. The notice shall be provided at least 60 days before displacement, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance;

(2) Other advisory services, as appropriate, including counseling, referrals to suitable (and where appropriate, accessible), decent, safe, and sanitary replacement housing, and fair housing-related advisory services;

(3) Payment for actual reasonable moving expenses, as determined by HUD;

(4) For displaced eligible families and individuals—

(i) The opportunity to relocate to a suitable (and where appropriate, accessible), decent, safe, and sanitary dwelling unit in a HUD-owned multifamily project, in a public housing project, or in another HUD subsidized multifamily housing project; or

(ii) Assistance under the Section 8 Certificate program (see § 882.209(a)(4)(ii)(B) of this title) or the Housing Voucher program (see § 887.155(c) of this title), if the assistance is available; and

(5) Such other federal, State or local assistance as may be available.

(d) *Relocation assistance at URA levels*—(1) *General.* Whenever assistance under 24 CFR part 886, subpart C (or other federal financial assistance, as defined in 49 CFR 24.2(j)) is provided in connection with the purchase, demolition, or rehabilitation of a multifamily property by a third party, any resulting displacement is subject to paragraph (d) of this section. A displaced person (defined in paragraph (d)(3) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the URA, implementing regulations at 49 CFR part 24, and this section.

(2) *Definition of ''initiation of negotiations''.* Under the URA, for purposes of determining the method for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term ''initiation of negotiations'' means the transfer of title to the purchaser.

(3) *Definition of displaced person.* (i) The term ''displaced person'' means any person (family, individual, business, or nonprofit organization) that moves from the real property, or moves personal property from the real property, permanently, as a direct result of acquisition, rehabilitation or demolition for a federally assisted project. This includes, but is not limited to:

(A) A person that moves permanently from the real property after receiving notice requiring such move, if the move occurs on or after the date of the transfer of title to the purchaser.

(B) Any person that HUD determines was displaced as a direct result of acquisition, rehabilitation or demolition for an assisted project.

(C) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the transfer of title to the purchaser, if the move occurs before the tenant is provided notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, sanitary, and where appropriate, accessible dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions shall include a monthly rent, including estimated average monthly utility costs, that does not exceed the greater of the tenant's monthly rent before transfer of title to the purchaser and estimated average monthly utility costs, or that is affordable, as defined in this part.

(D) A tenant-occupant of a dwelling unit who is required to relocate temporarily for the project, but does not return to the building/complex, if either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable.

(E) A tenant-occupant who moves from the building/complex permanently after he or she has been required to move to another unit in the same building/complex for the project, if either the tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding the provisions of paragraph (d)(3)(i) of this section, a person does not qualify as a ''displaced person'' if:

(A) The person is excluded under 49 CFR 24.2(g)(2).

(B) The person has been evicted for a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(C) The person moves into the property after transfer of title to the purchaser.

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project.

(e) *Temporary relocation (URA and non-URA relocation assistance).* Residential tenants, who will not be required to move permanently, but who

must relocate temporarily (*e.g.*, to permit property repairs), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent or utility costs. The party responsible for this requirement may, at its option, perform the services involved in temporarily relocating the tenants or pay for such services directly; and

(2) Appropriate advisory services, including reasonable advance written notice of the date and approximate duration of the temporary relocation; the suitable (and where appropriate, accessible), decent, safe, and sanitary housing to be made available for the temporary period; the terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and the right to financial assistance provided under paragraph (e)(1) of this section.

(f) *Appeals.* If a person disagrees with the purchaser's determination concerning the person's eligibility for relocation assistance or the amount of the assistance for which the person is eligible, the person may file a written appeal of that determination with the owner or purchaser. A person who is dissatisfied with the purchaser's determination on his or her appeal may submit a written request for review of that decision to the HUD Field Office responsible for administering the URA in the area.

§ 290.44 What actions must be taken concerning very low-income tenants in the disposition of a multifamily housing project?

HUD will require that for a period of 2 years, beginning upon the date of disposition of a multifamily housing project, the rent for any unit occupied by a very low-income family, that is a preexisting tenant and that would be required to pay a rent that is more than 30 percent of the adjusted income (as defined in part 813) of the family, may not be increased above the rent charged immediately before the acquisition. Such a family will also be considered displaced for purposes of the preferences for assistance under sections 6(c)(4)(A)(i), 8(d)(1)(A)(i), and 8(o)(3)(B) of the United States Housing Act of 1937.

§ 290.46 What restrictions concerning nondiscrimination against Section 8 certificate holders and voucher holders apply in the disposition of a multifamily housing project?

The purchaser of any multifamily housing project shall not refuse unreasonably to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation. This provision is limited in its application, for tenants or applicants with Section 8 Certificates or their equivalent (other than Vouchers), to those units which rent for an amount not greater than the Section 8 Fair Market Rent, as determined by HUD. The purchaser's agreement to this condition must be contained in any contract of sale and also may be contained in any regulatory agreement, use agreement, or deed entered into in connection with the disposition.

Subpart F—Subsidized Projects—Basic and Alternative Actions to Facilitate Disposition

§ 290.54 What are the basic actions that may be taken in the disposition of a subsidized project?

The basic assistance that HUD will provide and the basic restrictions HUD will require in the disposition of a subsidized project depend upon the profile of the project's units and tenants, as follows:

(a) *Assisted units—provision of project-based Section 8 assistance.* Except as noted in § 290.56, and to the extent budget authority is available, HUD will provide project-based Section 8 assistance to assist at least all of a subsidized project's units that were covered, before acquisition or foreclosure, by the rent subsidies (Rent Supp, RAP, Sec. 23, project-based Section 8) included in the definition of a subsidized project.

(b) *Assisted units—tenant eligibility restrictions.* The contract for project-based Section 8 assistance in accordance with paragraph (a) of this section, will provide that when a vacancy occurs in any unit that requires such assistance, but which was occupied by a family ineligible for such assistance, the owner will lease the available unit to a family that is eligible for the assistance.

(c) *Unassisted units—use and rent restrictions.* HUD will require use or rent restrictions on BMIR, 236, or 202 subsidized projects to ensure that units that were not covered before acquisition or foreclosure by Rent Supp, RAP, Sec. 23, or project-based Section 8 rent subsidies remain available and affordable for the remaining useful life of the project.

§ 290.56 What alternatives to the basic actions are available in the disposition of subsidized projects?

In the disposition of a subsidized project, HUD may take the following alternative actions instead of the basic actions listed in § 290.54:

(a) *Unit substitution: Assistance to, or restrictions on, units in unsubsidized projects instead of assistance to units in subsidized projects.* Instead of providing project-based Section 8 assistance as required by § 290.54(a), HUD may, in unsubsidized projects located in the same market area, provide project-based Section 8 assistance to units to be occupied by very low-income persons, or impose use and rent restrictions to assure that units remain available to and affordable by very low-income families for the remaining useful life of the project. When this unit substitution procedure is used, the total number of unsubsidized project units provided with assistance and/or placed under use and rent restrictions must be at least equal to the number of subsidized projects units that would have received project-based Section 8 in the absence of unit substitution. In addition, HUD will make tenant-based Section 8 assistance available to low-income families residing in the subsidized project's units that would have received project-based Section 8 assistance if this unit substitution alternative had not been used.

(b) *Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units.* Instead of providing project-based Section 8 assistance as required under § 290.54(a), HUD may enter into annual contribution contracts with public housing agencies to provide tenant-based Section 8 assistance to all low-income families who reside, on the date that the project is acquired by a purchaser other than HUD, in units that would have been eligible for the project-based Section 8 assistance under § 290.54. Tenant-based Section 8 assistance may be used in this way as a substitute for project-based Section 8 assistance in not more than 10 percent of the aggregate number of subsidized project units disposed of by HUD in any fiscal year, and only if HUD determines that there is available in the market area in which the project is located an adequate supply of habitable, affordable

housing for very low-income families and other low-income families using tenant-based assistance. The number of units eligible for this form of substitution within the 10 percent limit will be estimated at the beginning of each fiscal year, taking into consideration the aggregate number of subsidized project units disposed of by HUD in the immediately preceding fiscal year and the disposition activity planned for the current fiscal year.

(c) *Additional actions under subpart H.* Instead of, or in addition to, providing project-based Section 8 assistance in the disposition of a subsidized project as required under § 290.54(a), HUD may make use of the additional actions to facilitate the disposition of multifamily housing projects permitted in subpart H of this part.

Subpart G—Unsubsidized Projects—Basic and Alternative Actions to Facilitate Disposition

§ 290.64 What are the basic actions that may be taken in the disposition of an unsubsidized project?

The basic assistance that HUD will provide and the basic restrictions HUD will require in the disposition of an unsubsidized project depend upon the profile of the project's units and tenants, as follows:

(a) *Assisted units—provision of project-based Section 8 assistance.* Except as noted in § 290.66, and to the extent budget authority is available, HUD will provide project-based Section 8 assistance for all of an unsubsidized project's units that were covered, before acquisition or foreclosure, by an assistance contract under:

(1) The new construction and substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (the 1937 Act) (as in effect before October 1, 1983);

(2) The property disposition program under section 8(b) of the 1937 Act;

(3) The project-based certificate program under section 8 of the 1937 Act;

(4) The moderate rehabilitation program under section 8(e)(2) of the 1937 Act;

(5) Section 23 of the 1937 Act (as in effect before January 1, 1975);

(6) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(7) Section 8 of the 1937 Act, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965.

(b) *LMSA-assisted units—provision of tenant-based section 8 assistance.* HUD will provide tenant-based Section 8 assistance for families that are preexisting tenants of unsubsidized projects in units that, immediately before foreclosure or acquisition of the project by HUD, were covered by an assistance contract under the loan management set-aside program under section 8(b) of the United States Housing Act of 1937.

§ 290.66 What alternatives to the basic actions are available in the disposition of unsubsidized projects?

In disposing of an unsubsidized project, HUD may take the following alternative actions instead of the basic actions listed in § 290.64:

(a) *Substitution of tenant-based Section 8 assistance to low-income families instead of project-based assistance to units.* Instead of providing project-based Section 8 assistance as required under § 290.64, HUD may enter into annual contribution contracts with public housing agencies to provide tenant-based Section 8 assistance to all low-income families who reside, on the date that the project is acquired by a purchaser other than HUD, in units eligible for the project-based Section 8 assistance under § 290.64. Tenant-based Section 8 assistance may be used in this way as a substitute for project-based Section 8 assistance only if HUD determines that there is available in the market area in which the project is located an adequate supply of habitable, affordable housing for very low-income families and other low-income families using tenant-based assistance.

(b) *Additional actions under subpart H.* Instead of, or in addition to, providing project-based Section 8 assistance in the disposition of an unsubsidized project as required under § 290.64, HUD may make use of the additional assistance and restrictions for the disposition of multifamily housing projects permitted in subpart H of this part.

Subpart H—All Multifamily Housing Projects—Additional Actions to Facilitate Disposition

§ 290.70 What guidelines will HUD apply in determining which additional actions to take in the disposition of a multifamily housing project?

The additional actions to facilitate disposition available under this subpart are intended to replace, supplement or make more cost effective the Section 8 assistance that would otherwise be required, and are to be provided in a manner consistent with the goals of § 290.3 and unless otherwise noted:

(a) On terms that will ensure that at least the units in the project otherwise required to receive project-based Section 8 assistance in accordance with § 290.54(a) (for a subsidized project) and § 290.64(a) (for an unsubsidized project) are available to and affordable by low-income persons for the remaining useful life of the project, with use or rent restrictions as HUD may prescribe; and

(b) With tenant-based Section 8 assistance to any very low-income families who would have received project-based assistance under Section 8 in accordance with § 290.54(a) (for a subsidized project) and § 290.64(a) (for an unsubsidized project), but because of action taken under subpart H of this part, did not receive such assistance, and are left residing in units of the project with rents that exceed the amount payable as rent under section 3(a) of the United States Housing Act of 1937 for very low-income families.

§ 290.72 May HUD reduce the sales price for a project?

HUD may reduce the selling price of a project. The sales price for a project will be reasonably related to the intended use of the property as affordable housing for very low-income tenants after sale, any rehabilitation requirements for the project, the rents for units in the project that can be supported by the market, the amount of project-based Section 8 assistance being made available by HUD in the disposition of the project, the occupancy profile of the project (including family size and income levels for tenant families), and any other factors that the Department considers appropriate.

§ 290.74 May HUD require additional use and rent restrictions?

Consistent with the guidelines in § 290.70, HUD may require units in a project to be subject to use or rent restrictions to provide that the units will be available to and affordable by low- and very low-income persons for the remaining useful life of the project.

§ 290.76 May HUD provide short-term loans to facilitate the sale of a project?

HUD may provide short-term loans to facilitate the sale of a HUD-owned multifamily housing project if:

(a) Authority for such loans is provided in advance in an appropriation Act;

(b) The loan has a term of not more than 5 years;

(c) HUD determines, based upon documentation provided by the purchaser, that the purchaser has obtained a commitment of permanent financing to replace the short-term loan from a lender who meets standards established by the Department; and

(d) The terms of the loan are consistent with prevailing practices in the marketplace or the provision of the loan results in no cost to the Government, as defined in section 502 of the Congressional Budget Act of 1974.

§ 290.78 Under what conditions may HUD provide up-front grants?

For a HUD-owned multifamily housing project, HUD may utilize the budget authority provided for contracts issued under this part for project-based Section 8 assistance to (in addition to providing project-based Section 8 rental assistance) provide up-front grants for the necessary cost of rehabilitation and other HUD-approved related development costs to reduce the level of Section 8 contract rents if HUD determines that action under this section is more cost-effective than providing project-based Section 8 assistance in accordance with § 290.54(a) (for a subsidized project) and § 290.64(a) (for an unsubsidized project).

§ 290.80 What additional tenant-based assistance may HUD offer?

To facilitate the sale of a multifamily housing project, HUD may make tenant-based Section 8 assistance available to families eligible to receive such assistance residing in a multifamily housing project that do not otherwise qualify for project-based assistance.

§ 290.82 How may HUD provide for alternative uses of units in the disposition of a multifamily housing project?

(a) *In general.* Notwithstanding any other provision of law, after providing notice to and an opportunity for comment by preexisting tenants, HUD may allow up to:

(1) 10 percent of the total number of rental housing units in multifamily housing projects that are disposed of by the Department during any fiscal year to be made available for uses other than rental or cooperative uses, such as, low-income homeownership opportunities, or in any particular project, community space, office space for tenant or housing-related service providers or security programs, or small business uses, if such uses benefit the tenants of the project; and

(2) 5 percent of the total number of rental housing units in multifamily housing projects that are disposed of by the Department during any fiscal year to be used in any manner, if HUD and the unit of general local government or area-wide governing body determine that such use will further fair housing, community development, or neighborhood revitalization goals.

(b) *Computation of number of eligible units.* The number of units eligible for alternate uses in any fiscal year will be determined at the beginning of the fiscal year as the applicable percentages in paragraph (a) (1) or (2) of this section (*i.e.,* either 10 percent or 5 percent) of the estimated total number of units to be disposed of in the fiscal year, taking into consideration the total number of units in multifamily housing projects disposed of by the Department in the immediately preceding fiscal year, and the extent of the disposition activity planned in the current fiscal year.

(c) *Displacement protection.* HUD may take actions under paragraph (a) of this section only if:

(1) Tenant-based Section 8 assistance is made available to each family eligible for such assistance residing in the project that is displaced as a result of such actions; and

(2) HUD determines that sufficient habitable, affordable rental housing is available in the market area in which the project is located to ensure use of such assistance.

§ 290.84 What disposition assistance may be available to rebuild a multifamily housing project?

(a) Notwithstanding any provision of section 8 of the United States Housing Act of 1937, HUD may provide project-based assistance up to the levels required in § 290.54(a) (for a subsidized project) and § 290.64(a) (for an unsubsidized project) to support the rebuilding of a HUD-owned multifamily housing project rebuilt or to be rebuilt (in whole or in part and on-site, off-site, or in a combination of both) in connection with a disposition under this part, if HUD determines all of the following:

(1) The project is not being maintained in a decent, safe, and sanitary condition;

(2) The costs to HUD for rebuilding are such that the monthly debt service needed to amortize the cost of relocating tenants, demolition, site preparation, rebuilding, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are within 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A), and would be less expensive than rehabilitation;

(3) The unit of general local government in which the project is located approves the rebuilding and makes a financial contribution or other commitment to the project determined by HUD to be satisfactory;

(4) The rebuilding is a part of a local neighborhood revitalization plan approved by the unit of general local government.

(b) The provisions of § 290.42 apply to any tenants of the project who are displaced through an action taken under paragraph (a) of this section.

§ 290.86 What emergency assistance funds may be provided to tenants?

HUD may make arrangements with State agencies and units of general local government of States receiving emergency assistance under part A of title IV of the Social Security Act for the provision of assistance under that Act on behalf of eligible families who would reside in any multifamily housing projects.

§ 290.88 Under what circumstances may HUD make a determination not to preserve a project or a part of a project?

HUD may determine to demolish, or otherwise dispose of, a HUD-owned multifamily housing project, or any portion of such a project, or to foreclose a HUD-held mortgage on a multifamily housing project, without ensuring its continued availability as affordable rental or cooperative housing for low- and very low-income families under appropriate circumstances which may include one or more those listed in paragraphs (a) through (g) of this section. If HUD decides not to preserve an occupied multifamily housing project at a foreclosure sale or sale of a HUD-owned project, tenants must be provided relocation assistance as described in § 290.42.

(a) The costs to HUD of rehabilitation are such that the monthly debt service needed to amortize the cost of rehabilitation, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are, for subsidized and formerly subsidized projects, within 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A) or, for unsubsidized and formerly unsubsidized projects, within rents obtainable in the market.

(b) Construction is substantially incomplete.

(c) Preservation is not feasible because of environmental factors that cannot be mitigated by HUD or the purchaser. For example, when the project is located on a site that cannot be made to comply with the Section 8 Site and Neighborhood standards in 24 CFR 886.307(k) because of factors that adversely affect the health, safety and general welfare of residents such as air pollution; smoke; mud slides; fire or explosion hazards. Preservation may also be infeasible because of

significantly deteriorated surrounding neighborhood conditions with inadequate police or fire protection; high crime rates; drug infestation; or lack of public community services needed to support a safe and healthy living environment for residents.

(d) HUD determines the project is unfit for rehabilitation.

(e) Rehabilitation would cost more than constructing comparable new housing.

(f) A reduction in the number of units in the project will enhance long-term project viability, for example, demolition of a building to provide space for a playground, open space, or combining one-bedroom units to create larger units for families.

(g) Continued preservation of the project as rental or cooperative housing is not compatible with State or local land use plans for the area in which the project is located.

Subpart I—Sale of HUD-Held Multifamily Mortgages

§ 290.100 What is the purpose of this subpart?

The purpose of this subpart is to set out HUD's policy regarding the sale of subsidized and unsubsidized HUD-held mortgages. Except as otherwise provided in § 290.106(a)(2), the Department will sell these mortgages on a competitive basis. HUD retains full discretion to offer any qualifying mortgage for sale and to withhold or withdraw any offered mortgage from sale. However, when a qualifying mortgage is offered for sale, the procedures set out in this part will govern the sale.

§ 290.102 What effect does this subpart have on the applicability of Civil Rights requirements?

Nothing in this subpart relieves HUD or housing that receives federal financial assistance from federal civil rights requirements, including section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, the Age Discrimination Act of 1975, Executive Order 11063, and related regulations and requirements. This includes housing in which less than 50% of the units are receiving housing assistance payments under either Section 23 or Section 8 of the United States Housing Act of 1937 and housing in which the rent of any unit is paid by a Section 8 certificate or voucher.

§ 290.104 What tenant protections will apply in the sale of HUD-held subsidized mortgages?

HUD will only sell subsidized mortgages if the sale is part of a transaction that will ensure that the project subject to the mortgage will continue to operate, at least until the maturity date of the mortgage, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the mortgage was insured prior to its assignment.

§ 290.106 How will HUD sell current subsidized mortgages?

HUD will sell current mortgages, as follows:

(a) *Current mortgages with FHA mortgage insurance* will be sold either:

(1) On a competitive basis to FHA-approved mortgagees; or

(2) On a negotiated basis, to State or local governments, or to a group of investors that includes an agency of a State or local government, if:

(i) The terms of the sale include an agreement by the State or local government, or an agency of the State or local government, to:

(A) Act as mortgagee or owner of a beneficial interest in the mortgage; and

(B) Ensure that the project will maintain occupancy by the tenant group originally intended to be served by the subsidized housing program; and

(ii) The sales price is the best price that HUD can obtain from an agency of a State or local government while maintaining occupancy for the tenant group originally intended to be served by the subsidized housing program.

(b) *Current mortgages without FHA mortgage insurance* will be sold if HUD can offer protections equivalent to those listed for an insured sale in paragraph (a) of this section.

§ 290.108 How will HUD sell delinquent subsidized mortgages?

Delinquent mortgages will be sold only if, as part of the sales transaction:

(a) The mortgages are restructured; and

(b) Either FHA mortgage insurance or equivalent protections are provided.

§ 290.110 What is HUD's policy for selling HUD-held unsubsidized mortgages?

HUD's policy for selling HUD-held unsubsidized mortgages is as follows:

(a) *Current mortgages* may be sold with or without FHA mortgage insurance.

(b) *Delinquent mortgages* may be sold without FHA mortgage insurance. However, delinquent mortgages will not be sold if:

(1) HUD believes that foreclosure is unavoidable; and

(2) The project securing the mortgage is occupied by very low-income tenants who are not receiving housing assistance and would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the mortgage.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

2. The authority citation for 24 CFR part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

3. Section 886.302 is amended by revising the definitions of the terms ''*Eligible project or project*'', and ''*Owner*'', to read as follows:

§ 886.302 Definitions.

* * * * *

Eligible project or project. A multifamily housing project (see 24 CFR part 290):

(1) For which the disposition in accordance with the provisions of 24 CFR part 290 involves sale with Section 8 housing assistance to enable the project to be used, in whole or in part, to provide housing for lower income families; and

(2) The units of which are decent, safe, and sanitary.

* * * * *

Owner. The purchaser, including a cooperative entity or an agency of the Federal Government, under this subpart, of a HUD-owned project; or the purchaser, including a cooperative entity or an agency of the Federal Government, through a foreclosure sale of a project that was subject to a HUD-held mortgage.

* * * * *

4. Section 886.310 is revised to read as follows:

§ 886.310 Initial contract rents.

HUD will establish contract rents at levels that, together with other resources available to the purchasers, provide sufficient amounts for the necessary costs of rehabilitating and operating the multifamily housing project and do not exceed 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A).

5. Section 886.311 is revised to read as follows:

§ 886.311 Term of contract.

The contract term for any unit shall not exceed 15 years, except that the term may be less than 15 years as

provided under either paragraph (a) or (b) of this section.

(a) The contract term may be less than 15 years if HUD finds that, based on the rental charges and financing for the multifamily housing project to which the contract relates, the financial viability of the project can be maintained under a contract having a term less than 15 years. Where a contract of less than 15 years is provided under this paragraph, the amount of rent payable by tenants of the project for units assisted under such a contract shall not exceed the amount payable for rent under section 3(a) of the United States Housing Act of 1937 for a period of at least 15 years.

(b) The contract term may be less than 15 years if the assistance is provided under a contract authorized under section 6 of the HUD Demonstration Act of 1993, and pursuant to a disposition plan under this part for a project that is determined by the HUD to be otherwise in compliance with this part.

6. Section 886.319 is revised to read as follows:

§ 886.319 Responsibility for contract administration.

HUD is responsible for administration of the Contract. HUD may contract with another entity for the performance of some or all of its Contract administration functions.

Dated: October 13, 1995.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–5093 Filed 3–1–95; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Thursday
March 2, 1995

Part VIII

Department of Education

Bilingual Education: Systemwide Improvement Grants; Notice

DEPARTMENT OF EDUCATION

Bilingual Education: Systemwide Improvement Grants

AGENCY: Department of Education.

ACTION: Notice of proposed priority for fiscal year (FY) 1996 and following years.

SUMMARY: The Secretary proposes a priority for FY 1996 and following years under the Bilingual Education: Systemwide Improvement Grants program authorized under title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act). The Secretary takes this action to implement a provision of this Act by focusing Federal financial assistance on an identified national need. The priority is intended to provide financial assistance to local educational agencies (LEAs) or LEAs in collaboration with institutions of higher education (IHEs), community-based organizations (CBOs), other LEAs, or a State educational agency (SEA) to implement districtwide bilingual education programs or special alternative instructional programs that will serve a significant number of limited English proficient (LEP) children and youth in one or more LEAs with significant concentrations of these children and youth.

DATES: Comments must be received on or before April 3, 1995.

ADDRESSES: All comments concerning this proposed priority should be addressed to: Harry Logel, U.S. Department of Education, 600 Independence Ave., SW., Room 5090, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–5530. 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.

FOR FURTHER INFORMATION CONTACT: Harry Logel. Telephone: (202) 205–5530.

SUPPLEMENTARY INFORMATION: The Systemwide Improvement Grants program is a new program. Under section 7115(a) of the Act, the purpose of the program is to assist LEAs or LEAs in collaboration with IHEs, CBOs, other LEAs, or an SEA to implement districtwide bilingual education programs or special alternative instructional programs to improve, reform, and upgrade relevant programs and operations, within an entire LEA, that serve a significant number of LEP children and youth in one or more LEAs with significant concentrations of these children and youth.

To assist those LEAs that have a significant concentration of LEP children and youth, the Secretary proposes to require that to be eligible for funding the project must serve only LEAs in which the number of LEP students, in each LEA served, is at least 1,000 or at least 25 percent of the total student enrollment. By using a 1,000 or 25 percent threshold, the Secretary is targeting those LEAs in which LEP students constitute a major portion of the LEAs' programs and operations. The Secretary chose to allow either a number or a percentage threshold to include small and large school districts with significant concentrations of LEP students. If the Secretary had used only a percentage threshold, some of the larger districts would have been excluded from participating in the program even though they had significant numbers of LEP students enrolled in their districts. Using the 1,000 or 25 percent threshold, approximately 450 LEAs would be eligible to participate under this program. The number of eligible LEAs is based on data from the Descriptive Study of Services to LEP Students conducted by Development Associates, Inc., in 1993.

The Secretary will announce the final priority for FY 1996 and following years in a notice in the **Federal Register** at a later date. The final priority for FY 1996 and following years will be determined by response to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition for FY 1996 will be published in the **Federal Register** following publication of the notice of final priority. A notice of final priority for FY 1995 for this program is published elsewhere in this issue of the **Federal Register**.

Priority

Under section 7115(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Projects that serve only LEAs in which the number of LEP students, in each LEA served, is at least 1,000 or at least 25 percent of the total student enrollment.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 5611, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 7425.

(Catalog of Federal Domestic Assistance Number 84.291 Bilingual Education: Systemwide Improvement Grants)

Dated: February 6, 1995.

Eugene E. Garcia,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 95–5036 Filed 3–1–95; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday
March 2, 1995

Part IX

Department of Education

Bilingual Education: Systemwide Improvement Grants; Notice

DEPARTMENT OF EDUCATION

Bilingual Education: Systemwide Improvement Grants

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal year (FY) 1995.

SUMMARY: The Secretary announces a priority for FY 1995 under the Bilingual Education: Systemwide Improvement Grants program authorized under title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act). The Secretary takes this action to implement a provision of this Act by focusing Federal financial assistance on an identified national need. The priority is intended to provide financial assistance to local educational agencies (LEAs) or LEAs in collaboration with institutions of higher education (IHEs), community-based organizations (CBOs), other LEAs, or a State educational agency (SEA) to implement districtwide bilingual education programs or special alternative instructional programs that will serve a significant number of limited English proficient (LEP) children and youth in one or more LEAs with significant concentrations of these children and youth.

EFFECTIVE DATE: This priority takes effect April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Harry Logel, U.S. Department of Education, 600 Independence Avenue SW., Room 5090, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–5530. 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 Systemwide Improvement Grants program is a new program. Under section 7115(a) of the Act, the purpose of the program is to assist LEAs or LEAs in collaboration with IHEs, CBOs, other LEAs, or an SEA to implement districtwide bilingual education programs or special alternative instructional programs to improve, reform, and upgrade relevant programs and operations, within an entire LEA, that serve a significant number of LEP children and youth in one or more LEAs with significant concentrations of these children and youth.

To assist those LEAs that have a significant concentration of LEP children and youth, the Secretary requires that to be eligible for funding the project must serve only LEAs in which the number of LEP students, in each LEA served, is at least 1,000 or at least 25 percent of the total student enrollment. By using a 1,000 or 25 percent threshold, the Secretary is targeting those LEAs in which LEP students constitute a major portion of the LEAs' programs and operations. The Secretary chose to allow either a number or a percentage threshold to include small and large school districts with significant concentrations of LEP students. If the Secretary had used only a percentage threshold, some of the larger districts would have been excluded from participating in the program even though they had significant numbers of LEP students enrolled in their districts. Using the 1,000 or 25 percent threshold, approximately 450 LEAs would be eligible to participate under this program. The number of eligible LEAs is based on data from the Descriptive Study of Services to LEP Students conducted by Development Associates, Inc., in 1993.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition for FY 1995 will be published in the **Federal Register** at a later date.

Priority

Under section 7115(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that serve only LEAs in which the number of LEP students, in each LEA served, is at least 1,000 or at least 25 percent of the total student enrollment.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities. However, in order to make timely grant awards in FY 1995, the Director, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue this final priority, which will apply only to the FY 1995 grant competition.

Elsewhere in this issue of the **Federal Register**, the Director is publishing a notice of proposed priority for this program and offering interested parties the opportunity to comment. The proposed priority, which is identical to this final priority, would apply to grant competitions under the program beginning in FY 1996.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 7425.

(Catalog of Federal Domestic Assistance Number 84.291 Bilingual Education: Systemwide Improvement Grants)

Dated: February 6, 1995.

Eugene E. Garcia,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 95–5035 Filed 3–1–95; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday
March 2, 1995

Part X

Department of Education

Bilingual Education: Comprehensive School Grants; Notice

DEPARTMENT OF EDUCATION

Bilingual Education: Comprehensive School Grants

AGENCY: Department of Education.

ACTION: Notice of proposed priority for fiscal year (FY) 1996 and following years.

SUMMARY: The Secretary proposes a priority for FY 1996 and following years under the Bilingual Education: Comprehensive School Grants program authorized in title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act). The Secretary takes this action to implement a provision of the Act by focusing Federal financial assistance on an identified national need. The priority is intended to provide financial assistance to those local educational agencies (LEAs) or LEAs in collaboration with institutions of higher education (IHEs), community-based organizations (CBOs), other LEAs, or a State educational agency (SEA) proposing projects that will serve schools with significant concentrations of limited English proficient (LEP) students.

DATES: Comments must be received on or before April 3, 1995.

ADDRESSES: All comments concerning this proposed priority should be addressed to: Harry Logel, U.S. Department of Education, 600 Independence Ave., SW., Room 5090, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–5530. 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.

FOR FURTHER INFORMATION CONTACT: Harry Logel. Telephone: (202) 205–5530.

SUPPLEMENTARY INFORMATION: The Comprehensive School Grants program is a new program. Under section 7114(a) of the Act, the purpose of the program is to assist LEAs or LEAs in collaboration with IHEs, CBOs, other LEAs, or an SEA to implement schoolwide bilingual education programs or special alternative instructional programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve virtually all LEP children and youth in schools with significant concentrations of these children and youth.

To assist those schools with significant concentrations of LEP children and youth, the Secretary proposes to require that to be eligible for funding the project must serve only schools in which the number of LEP students, in each school served, equals at least 25 percent of the total student enrollment. By using a 25 percent threshold the Secretary is targeting those schools in which LEP students constitute a major portion of the school population. The Secretary chose a percentage threshold rather than a number threshold to include schools with small student enrollments. Using the 25 percent threshold, approximately 4,400 schools would be eligible to participate under this program. These numbers are based on data from the Descriptive Study of Services to LEP Students conducted by Development Associates, Inc., in 1993.

The Secretary will announce the final priority for FY 1996 and following years in a notice in the **Federal Register** at a later date. The final priority for FY 1996 and following years will be determined by response to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition for FY 1996 will be published in the **Federal Register** following publication of the notice of final priority. A notice of final priority for FY 1995 for this program is published elsewhere in this issue of the **Federal Register**.

Priority

Under section 7114(a) of the Act, the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Projects that serve only schools in which the number of LEP students, in each school served, equals at least 25 percent of the total student enrollment.

Intergovernmentary Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 5611, 330 C Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 7424.

(Catalog of Federal Domestic Assistance Number 84.290 Bilingual Education: Comprehensive School Grants.)

Dated: February 6, 1995.

Eugene E. Garcia,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 95–5037 Filed 3–1–95; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday
March 2, 1995

Part XI

Department of Education

Bilingual Education: Comprehensive School Grants; Notice

DEPARTMENT OF EDUCATION

Bilingual Education: Comprehensive School Grants

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal year (FY) 1995.

SUMMARY: The Secretary announces a priority for FY 1995 under the Bilingual Education: Comprehensive School Grants program authorized in title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act). The Secretary takes this action to implement a provision of the Act by focusing Federal financial assistance on an identified national need. The priority is intended to provide financial assistance to those local educational agencies (LEAs) or LEAs in collaboration with institutions of higher education (IHEs), community-based organizations (CBOs), other LEAs, or a State educational agency (SEA) proposing projects that will serve schools with significant concentrations of limited English proficient (LEP) students.

EFFECTIVE DATE: This priority takes effect April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Harry Logel, U.S. Department of Education, 600 Independence Ave., SW., Room 5090, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–5530. 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 Comprehensive School Grants program is a new program. Under section 7114(a) of the Act, the purpose of the program is to assist LEAs or LEAs in collaboration with IHEs, CBOs, other LEAs, or an SEA to implement schoolwide bilingual education programs or special alternative instructional programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve virtually all LEP children and youth in schools with significant concentrations of these children and youth.

To assist those schools with significant concentrations of LEP children and youth, the Secretary requires that to be eligible for funding the project must serve only schools in which the number of LEP students, in each school served, equals at least 25 percent of the total student enrollment. By using a 25 percent threshold the Secretary is targeting those schools in which LEP students constitute a major portion of the school population. The Secretary chose a percentage threshold rather than a number threshold to include schools with small student enrollments. Using the 25 percent threshold, approximately 4,400 schools would be eligible to participate under this program. These numbers are based on data from the Descriptive Study of Services to LEP Students conducted by Development Associates, Inc., in 1993.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition for FY 1995 will be published in the **Federal Register** at a later date.

Priority

Under section 7114(a) of the Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that serve only schools in which the number of LEP students, in each school served, equals at least 25 percent of the total student enrollment.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities. However, in order to make timely grant awards in FY 1995, the Director, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue this final priority, which will apply only to the FY 1995 grant competition.

Elsewhere in this issue of the **Federal Register**, the Director is publishing a notice of proposed priority for this program and offering interested parties the opportunity to comment. The proposed priority, which is identical to the final priority, would apply to grant competitions under the program beginning in FY 1996.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 7424.

(Catalog of Federal Domestic Assistance Number 84.290 Bilingual Education: Comprehensive School Grants.)

Dated: February 6, 1995.

Eugene E. Garcia,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 95–5038 Filed 3–1–95; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday
March 2, 1995

Part XII

Department of Housing and Urban Development

24 CFR Part 888

Low Income Housing; Housing Assistant Payments (Section 8); Fair Market Rent Calculation Methods; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. R–95–1764; FR–3694–P–01]

RIN 2501–AB76

Fair Market Rents for Section 8 Housing Assistance Payments Program; Amendments to Method of Calculating

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes amendments to the Department's regulations at 24 CFR part 888 governing the method of calculating Fair Market Rents (FMRs) for the Section 8 Rental Certificate program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation program (including Single Room Occupancy); housing assisted under the Loan Management and Property Disposition programs; payment standards for the Rental Voucher program; and any other programs whose regulations specify the use of such FMRs.

DATES: Comments due date: April 3, 1995.

ADDRESSES: Interested persons are invited to submit comments on this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Communications must refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing, (202) 708–0477 (TDD: (202) 708–0850), for questions relating to the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs;

Barbara Hunter, Program Planning Division, Office of Multifamily Housing Management, (202) 708–3944 (TDD: (202) 708–4594), for questions relating to all other Section 8 programs.

David Pollack, Office of Community Planning and Development, (202) (708–1234) (TDD: (202) 708–2565), for questions relating to Moderate Rehabilitation, Single Room Occupancy (SRO).

Michael Allard, Office of Policy Development and Research, (202) (708–0577) (TDD: 708–1455), for questions relating to measurement of rent levels.

Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Introduction and Applicability

Section 8 of the U. S. Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid low-income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents (FMRs) established by HUD for the Rental Certificate program, or by payment standards established by local housing authorities for the Rental Voucher program based on the FMRs. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately-owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities. (The amount of rent payable by a resident of assisted housing is based on income, not the FMR.)

Under section 8(c) of the Act, the Secretary of HUD is directed to establish FMRs periodically, but not less frequently than annually. HUD publishes proposed FMRs each year, and after a period of public comment, publishes the final FMRs for the next fiscal year.

The method used to calculate FMRs is described in 24 CFR part 888, subpart A. With this publication HUD is updating that regulation to specify the most current information being used. This rule would amend the regulations:

(1) To change the FMR rent standard from the 45th to 40th percentile rent of the rent distribution of rental housing units;

(2) To identify Random Digit Dialing (RDD) telephone surveys as a data source used to establish FMRs for selected individual areas and to develop rent-change factors for updating FMRs;

(3) To provide that FMRs for manufactured home spaces are set at 30 percent of the FMR for a two-bedroom housing unit;

(4) To authorize the Secretary to establish FMR areas that differ from the OMB definitions of metropolitan areas where the OMB definitions are determined by HUD to be larger than housing market areas; and

(5) To state the requirement that, in order to be considered as a basis for revising the FMRs, public comments on proposed FMRs must contain statistically valid rental housing survey data justifying the requested changes.

The amendments to the method of calculating FMRs proposed in this rule would apply to the following Section 8 Housing Assistance Payments programs: The Rental Certificate program, including space rentals by owners of manufactured homes; the Moderate Rehabilitation program and Moderate Rehabilitation SRO Program; the loan management program for projects with HUD-insured or HUD-held mortgages, as well as the Property Disposition program; and any other HUD programs whose regulations provide for the use of these FMRs (e.g., programs to assist the homeless). In addition, the rule would amend the regulations to reflect use of FMRs to establish payment standards for the Rental Voucher program.

II. Discussion of Amendments

Change in Percentile (§ 888.113(a))

FMRs are gross rent estimates; they include shelter rent and the cost of utilities, except telephone. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many families as possible. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units. The current definition used is the 45th percentile rent, the dollar amount below which 45 percent of the standard quality rental housing units rent.

This rule would change the definition to the 40th percentile rent of the rent distribution of standard quality rental housing units. The impact of this proposal is that FMRs on average will be 3.3 percent less than if they were set at the 45th percentile level. The current FMR standard is believed to be higher than necessary for successful operation of the affected programs. HUD believes that the change in the FMR standard will not significantly alter the amount, or quality, of rental housing available to program participants. The sample data used to calculate FMRs will continue to exclude substandard units and public housing units, and the FMR standard will continue to be based on only units occupied by recent movers.

Added Data Source (§ 888.113(c))

In developing the base-year FMR estimates, HUD uses the most accurate and current data available. The

regulations currently provide for two sources of survey data: (1) The decennial Census and (2) post-Census American Housing Surveys (AHSs). The regulations also currently provide for base-year FMRs to be updated each year using Consumer Price Index (CPI) data for rents and for utilities. This rule would amend the regulations to include Random Digit Dialing (RDD) telephone surveys as a third data source for base-year estimates and for rent-change factors for updating rents in FMR areas without a local CPI survey. The RDD telephone survey technique is based on a sampling procedure that uses computers to select random samples of telephone numbers. Each sampled number is phoned to establish eligibility for the survey and, if eligible, the respondent is asked about the unit's rent and utility usage.

Three types of RDD surveys are used, the first two on behalf of HUD, and the third by individual PHAs. Under contract with HUD, a professional survey firm does large-scale RDD surveys to establish base-year FMRs for areas where HUD suspects FMRs might not correspond well with current market conditions. About 60 areas are chosen to be surveyed each year. In addition, the same firm also does 20 RDD surveys to establish rent-change factors in the metropolitan and nonmetropolitan parts of each of the ten HUD geographic regions.

Finally, individual PHAs are encouraged to sponsor or conduct various levels of RDD surveys if they wish to comment on proposed FMRs. The larger PHAs are encouraged to contract with professional survey firms to do large-scale RDD surveys. Smaller PHAs are allowed to use a simplified version of the RDD survey that makes it possible for them to do their own RDD surveys. (PHAs and other commenters are not required to use RDD surveys as long as they provide statistically-reliable, unbiased estimates of the 40th percentile gross rent.)

All of the RDD survey techniques involve drawing random samples of renter units. All exclude public housing units and other subsidized housing where the respondent does not know the full market rent. The surveys also exclude newly-built units and units for which no cash rent is paid. They do not exclude substandard units because there is no practical way to determine housing quality from telephone interviews. However, a HUD analysis conducted specifically to address this issue has shown that the slight downward bias caused by including some rental units that are in substandard condition is almost exactly offset by the slight upward bias that results from surveying only units with telephones.

Tests in areas where Census, AHS, and CPI data on rents are available have shown that professionally-conducted RDD surveys have a high degree of statistical accuracy. In those tests, HUD concluded that there was a 95 percent likelihood that the rent estimates developed using this approach were within 3 to 4 percent of the actual rent value and that virtually all were within 5 percent. The PHA-conducted surveys using the modified RDD technique are less precise but are still within acceptable ranges of accuracy.

FMRs for Manufactured Home Spaces (§ 888.113(e))

This rule also proposes to calculate FMRs for manufactured home spaces as a percentage of the FMR for two-bedroom units. The base estimates used to calculate the FMRs for manufactured home spaces were not revised in FY 1994 because no data were available in the 1990 Census on manufactured home space rentals, and no other source of reliable data was found that could be used for this purpose.

Originally the FMRs for rental of manufactured home spaces were established using AHS data (no longer available) for the nonmetropolitan parts of states and HUD Field Office surveys of the metropolitan areas. Over the years the FMRs for additional individual areas were established on the basis of local surveys submitted as public comments.

Because the FMRs for manufactured home spaces are based on old survey data, and there is no current data source to update these estimates, HUD does not consider them to be sufficiently accurate for continued use. Further, the very limited use of this part of the Certificate program does not justify the cost of obtaining the necessary survey data to re-benchmark the FMRs. HUD is proposing, therefore, to amend this rule to establish FMRs for manufactured home spaces at 30 percent of the applicable Section 8 two-bedroom FMR for the Rental Certificate program. HUD arrived at the 30 percent standard after analyzing the existing manufactured home space FMRs and concluding that the substantial majority of the FMRs were within a 20 to 30 percent range of the two-bedroom FMRs.

HUD will continue to accept public comments requesting modification of the proposed manufactured home space FMRs for those areas where space rentals are thought to differ from the 30 percent standard. To be considered for approval, the comments must contain statistically-valid survey data that show the 40th percentile manufactured home space rent (excluding the cost of utilities) for the FMR area. This program uses the same FMR area definitions as the Rental Certificate program. In addition HUD is proposing to retain the manufactured home space FMR revisions approved since 1990. The reason for continuing to use the revised FMRs is that they are based on recent survey data that HUD determined to be valid. Once approved, the revised manufactured home space FMRs establish new base-year estimates that will be updated annually using the same data used to update the Rental Certificate program FMRs.

FMR Areas (§ 888.113(b)

Section 888.113(b) would be amended to authorize the Secretary to make exceptions to the use of the Office of Management and Budget definitions of Metropolitan Statistical Areas (MSAs) and Primary Metropolitan Statistical Areas (PMSAs) as FMR areas where HUD determines that use of an MSA or PMSA would encompass an area that is larger than a housing market area.

Public Comments On Proposed FMRs (§ 888.115)

The proposed rule states the requirement that, in order to be considered for approval, public comments on proposed FMRs must contain statistically-valid rental housing survey data justifying the requested revision. Each year, the Department receives, in response to its request for public comments on proposed FMRs, comments that merely object to the proposed FMRs for the area, but do not contain any documentation to support the assertion that the FMRs are inaccurate. The Notice announcing proposed FMRs has always stipulated that such documentation be included in the comment. This rule would make the regulations for the program clear that adequate supporting rental housing survey data are necessary to justify a requested change.

III. Justification for Reduced Comment Period

HUD's general policy is to provide a 60-day public comment period. For this proposed rule, however, HUD is providing only a 30-day comment period. The reduced comment period is justified because the public has had ample notice that HUD was contemplating the 40th percentile Fair Market Rent (FMR) standard.

On June 23, 1994 (59 FR 32492), HUD published a notice in the **Federal Register** containing two separate sets of proposed FMRs—one based on the 45th

percentile rental distribution of standard quality rental housing units, and the other based on the 40th percentile rent of the same rental housing distributions. The published notice explained that HUD was considering a 40th percentile FMR standard. A reduction in the FMR standard was also announced as a proposed cost savings measure in HUD's FY 1995 budget presentation.

The June 23, 1994 Notice requested public comment on the proposed FMRs at both the 45th and 40th percentiles. Since the public has already had the opportunity to consider the proposed change in the FMR standard and to comment on the actual proposed FMRs at the 40th percentile level, an abbreviated comment period on the same idea will not have an adverse impact on the ability of the public to participate in this rulemaking.

The Department believes this abbreviated comment period is justified in order to speed the publication of a final rule which will allow more low income families to receive housing assistance.

IV. Other Matters

Executive Order 12866, Regulatory Planning and Review

This proposed rule was reviewed and approved by the Office of Management and Budget as a significant rule, as that term is defined in Executive Order 12866, which was signed by the President on September 30, 1993. Any changes to the proposed rule as a result of that review are contained in the public file of the rule in the office of the Department's Rules Docket Clerk.

Environmental Assessment

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the establishment and review of fair market rents is categorically excluded from the Department's regulations implementing the National Environment Policy Act at 24 CFR 50.20(*l*).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this document before publication and by approving it certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities, because FMRs reflect the rents for similar quality units in the area. Therefore, FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule would not have a significant impact on family formation, maintenance, or well-being. The proposed rule would amend the method for calculating Fair Market Rent for various Section 8 assisted housing programs, and would not affect the amount of rent a family receiving rental assistance pays, which is based on a percentage of the family's income.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, Federalism, has determined that this proposal would not involve the preemption of State law by Federal statute or regulation and would not have Federalism implications. The establishment of Fair Market Rents does not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

Semi-Annual Regulatory Agenda

This rule was listed as sequence number 1727 in the Department's Semiannual Regulatory Agenda published on November 14, 1994 (59 FR 57632, 57641) under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (Section 8).

List of Subjects in 24 CFR Part 888

Grant programs—housing and community development, Rent subsidies.

Accordingly, title 24 of the Code of Federal Regulations would be amended as follows:

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS

1. The authority citation for part 888 would continue to read as follows:

Authority: 42 U.S.C. 1437c, 1437f, and 3535(d).

2. Sections 888.101 and 888.105 would be removed, and § 888.111 would be revised to read as follows:

§ 888.111 Fair market rents for existing housing: Applicability.

The Fair Market Rents (FMRs) for existing housing (see definition in § 882.102 of this chapter) are determined by the Department of Housing and Urban Development (HUD) and apply to the Section 8 Certificate Program, including space rentals by owners of manufactured homes under the Section 8 Certificate Program, the Section 8 Moderate Rehabilitation Program, Section 8 existing housing project-based assistance, and Section 8 existing housing assisted under part 886. FMRs are also used to determine payment standard schedules in the Rental Voucher program.

3. Section 888.113, would be revised to read as follows:

§ 888.113 Fair market rents for existing housing: Methodology.

(a) *Basis for setting fair market rents.* Fair Market Rents (FMRs) are estimates of rent plus the cost of utilities, except telephone. They are housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units in the FMR area. FMRs are set at the 40th percentile rent—the dollar amount below which 40 percent of standard quality rental housing units rent. The 40th percentile rent is drawn from the distribution of rents of all units that are occupied by recent movers. Adjustments are made to exclude Public Housing units and newly built units.

(b) *FMR Areas.* FMR areas are metropolitan areas and nonmetropolitan counties (nonmetropolitan parts of counties in the New England States). With several exceptions, the most current Office of Management and Budget (OMB) metropolitan area definitions of Metropolitan Statistical Areas (MSAs) and Primary Metropolitan Statistical Areas (PMSAs) are used because of their generally close correspondence with housing market area definitions. HUD may make exceptions to OMB definitions if the MSAs or PMSAs encompass areas that are larger than housing market areas. The counties deleted from the HUD-defined FMR areas in those cases are established as separate metropolitan county FMR areas. FMRs are established for all areas in the United States, the District of Columbia, Puerto Rico, the Virgin Islands, and the Pacific Islands.

(c) *Data sources.* (1) HUD uses the most accurate and current data available

to develop the FMR estimates and may add other data sources as they are discovered and determined to be statistically valid. The following sources of survey data are used to develop the base-year FMR estimates:

(i) The most recent decennial Census, which provides statistically reliable rent data.

(ii) The American Housing Survey (AHS) data, conducted by the Bureau of the Census for HUD. AHS's have comparable accuracy to the decennial Census, and are used to develop between-census revisions for the largest metropolitan areas on a four-year revolving schedule.

(iii) Random Digit Dialing (RDD) telephone survey data, based on a sampling procedure that uses computers to select statistically random samples of rental housing.

(iv) Statistically valid information, as determined by HUD, presented to HUD during the public comment and review period.

(2) Base-year FMRs are updated and trended to the midpoint of the program year they are to be effective using Consumer Price Index (CPI) data for rents and for utilities or using rent-change factors obtained from the RDD regional surveys. The RDD rent-change factors are developed annually for the metropolitan and nonmetropolitan parts of the HUD-specified geographic regions not covered by CPI surveys, and are used to update the base-year FMR estimates within these regions.

(d) *Bedroom size adjustments.* (1) For most areas the ratios developed from the most recent decennial Census are applied to the two-bedroom FMR estimates to derive FMRs for other bedroom sizes. Exceptions to this procedure may be made for areas with local bedroom intervals below an acceptable range. To help the largest most difficult to house families find units, higher ratios than the actual market ratios may be used for three-bedroom and larger-size units.

(2) The FMR for single room occupancy housing is 75 percent of the FMR for a zero bedroom unit.

(e) *Manufactured home space.* The FMR for a manufactured home space is 30 percent of the FMR for a two-bedroom unit, or, where approved by HUD on the basis of survey data submitted in public comments, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. HUD accepts public comments requesting revision of the proposed manufactured home space FMRs for areas where space rentals are thought to differ from the 30 percent standard. To be considered for approval, the comments must contain statistically-valid survey data that show the 40th percentile manufactured home space rent (excluding the cost of utilities) for the FMR area. Once approved, the revised manufactured home space FMRs establish new base-year estimates that will be updated annually using the same data used to update the Rental Certificate program FMRs.

4. Section 888.115 would be revised to read as follows:

§ 888.115 Fair market rents for existing housing: Manner of publication.

FMRs will be published at least annually in the **Federal Register**. The Department will propose FMRs and provide a comment period of at least 30 days for the purpose of identifying areas where the FMRs are believed to be too high or too low. To be considered for FMR revisions, public comments must include statistically-valid rental housing survey data that justify the requested changes. After the comments have been considered, the Department will publish a final notice announcing FMRs to be effective on October 1 each year.

Dated: January 30, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–5094 Filed 3–1–95; 8:45 am]

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Federal Register

Thursday
March 2, 1995

Part XIII

Securities and Exchange Commission

17 CFR Part 239, 240 et al.

Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master Feeder Funds; Voting on Distribution Plans; Final Rules and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, and 274

[Release Nos. 33–7143, IC–20915, File No. S7–32–93]

RIN 3235–AF00

Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds; Class Voting on Distribution Plans

AGENCY: Securities and Exchange Commission

ACTION: Final Rules

SUMMARY: The Securities and Exchange Commission is adopting a rule under the Investment Company Act of 1940 (''Investment Company Act'') to permit open-end management investment companies (''mutual funds'') to issue multiple classes of voting stock representing interests in the same portfolio. The new rule will eliminate the need for funds seeking to issue multiple classes of their shares to apply for exemptions. The Commission also is adopting amendments to certain registration statement forms under the Investment Company Act and the Securities Act of 1933 (''Securities Act'') and publishing a staff guide to one registration form. These amendments require that multiple class and master-feeder funds provide investors with certain disclosure. The disclosure will allow investors to obtain information about these funds and their structures.

DATES: *Effective Date:* April 3, 1995.

Compliance Date: Registration statements and post-effective amendments filed with the Commission after the effective date must be in compliance with the amendments to Forms N–1A and N–14.

FOR FURTHER INFORMATION CONTACT: Karrie McMillan, Senior Counsel (202) 942–0695, or Robert G. Bagnall, Assistant Chief (202) 942–0686, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Stop 10–6, Washington, D.C. 20549.

Requests for formal interpretive advice should be directed to the Office of Chief Counsel (202) 942–0659, Division of Investment Management, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is today adopting rule 18f–3 [17 CFR 270.18f–3] and a related amendment to rule 12b–1 [17 CFR 270.12b–1], both under the Investment Company Act. The Commission is also adopting amendments to Forms N–1A [17 CFR 239.15A, 274.11A] and N–14 [17 CFR 239.23].

Most multiple class funds have also obtained exemptive relief to impose contingent deferred sales loads (''CDSLs''). In separate releases, the Commission also is adopting rule 6c–10 [17 CFR 270.6c–10] under the Investment Company Act, to allow mutual funds to impose CDSLs, and proposing to amend the rule to permit other forms of deferred loads, such as installment loads, and to remove many of the requirements of the rule as adopted.[1]

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Executive Summary

Since 1985, the Commission has issued approximately 200 exemptive orders allowing funds to issue multiple classes of shares representing interests in the same portfolio, typically with different distribution arrangements. The orders frequently impose as many as 20 conditions designed to address various investor protection concerns.

The Commission is adopting rule 18f–3 under the Investment Company Act, which will permit funds to issue multiple classes of shares without the need to seek exemptions from the Commission. The rule will decrease the amount of time and expense involved in creating these structures. It also will reduce the Commission's burden of reviewing the applications. The rule requires certain differences in the expenses, rights, and obligations of different classes, permits certain other differences among classes, specifies the matters on which class voting is required, and prescribes how income and expenses must be allocated. The rule also emphasizes the responsibilities of the board of directors to establish and monitor allocation and other procedures in the best interests of each class and of the fund as a whole. Finally, the rule permits, but does not require, different classes to have different exchange privileges and conversion rights. A related amendment to rule 12b–1 clarifies that a rule 12b–1 plan must have separate provisions for each class; any action on the plan, such as director or shareholder approval, must take place separately for each class.

Over the past few years, many fund sponsors have adopted another distribution arrangement designed to achieve many of the same business goals as the multiple class structure without the need to obtain exemptions under section 18. This ''master-feeder'' arrangement comprises a two-tier structure in which one or more funds (the upper tier) invest solely in the securities of another fund (the lower tier).[2] Although master-feeder structures are functionally similar to multiple class funds, they are viewed as not needing exemptions and have been subject to different disclosure requirements.

The disclosure requirements adopted today apply equally to multiple class and master-feeder funds, and are similar to those currently in effect for master-feeder funds. A prospectus for a class or feeder fund will be required to include disclosure about other publicly offered classes or feeder funds not offered through the prospectus and a telephone number an investor may call to receive additional information about other classes or feeder funds sold by the same bank, broker, or other financial intermediary. In view of commenters' concerns, the Commission is not adopting the more extensive disclosure requirements originally proposed. The provisions as adopted are consistent

[1] Exemption for Certain Open-End Management Investment Companies to Impose Contingent Deferred Sales Loads, Investment Company Act Release No. 20916 (Feb. 23, 1995); Exemption for Certain Open-End Management Investment Companies to Impose Deferred Sales Loads, Investment Company Act Release No. 20917 (Feb. 23, 1995).

[2] Master-feeder funds are often referred to as ''core and feeder'' or ''hub and spoke'' funds. Signature Financial Group is the originator and patent licensor of the Hub and Spoke® form of the master-feeder structure.

with the Commission's encouragement of simplified prospectuses.

I. Background

Both the multiple class and master-feeder structures may benefit shareholders and fund sponsors. These structures may increase investor choice, result in efficiencies in the distribution of fund shares, and allow fund sponsors to tailor products more closely to different investor markets. Fund sponsors assert that multiple classes may enable funds to attract larger asset bases, permitting them to spread fixed costs over more shares, qualify for discounts in advisory fees (''breakpoints''), and otherwise experience economies of scale, resulting in lower fees and expenses. They also state that multiple classes avoid the need to create ''clone'' funds, which require duplicative portfolio and fund management expenses. Furthermore, fund sponsors state that a larger asset base permits greater portfolio liquidity and diversification.

Master-feeder funds may achieve similar benefits of economies of scale, thus potentially lowering expenses, and also allow several different small funds access to the same management and compliance personnel. The master-feeder structure allows a fund sponsor to offer feeder funds that invest in specialized portfolios, even though the sponsor's expected asset base may not justify organizing a stand-alone fund for that market or market segment. Sponsors also use this structure to offer off-shore and other unregistered feeder funds.[3]

Investor understanding of sales and service charges in both arrangements, however, has been a subject of concern to the Commission.[4] Some commentators have asserted that the complexity generated by these arrangements may confuse many investors, who often may not understand them or the effect that fees have upon performance.[5]

On December 15, 1993, the Commission proposed for public comment rule 18f–3 and related amendments to rule 12b–1 under the Investment Company Act and advertising and prospectus disclosure requirements.[6] Among other things, rule 18f–3 would have allowed funds to issue multiple classes of shares without the need to apply for and receive an exemption from the Commission and largely would have codified the exemptive orders. The proposal also would have made consistent the disclosure requirements of Form N–1A for multiple class and master-feeder funds by imposing disclosure requirements based on those in the multiple class exemptive orders. These requirements would have included a prominent legend following the fee table disclosing the availability of other classes or feeder funds not offered in that prospectus, and an undertaking to provide investors with additional information about other classes or feeder funds. They also would have required full cross-disclosure in the prospectus about any other classes or feeder funds that were offered or made available through the same broker, dealer, bank, or other financial intermediary, and permitted investors to choose among alternative arrangements for sales and related charges. The proposal also would have required a line graph comparing the hypothetical value of holdings of the classes or feeder funds described in the prospectus upon redemption at the end of each year during a ten-year period. The proposal would have made conforming changes to advertising and sales literature rules and Form N–14. A related amendment to rule 12b–1 would have clarified that a rule 12b–1 plan must treat each class separately and required separate director and shareholder approval.

II. Discussion

The Commission received 24 comments on the proposal.[7] Most of the commenters were fund groups, law firms, and trade associations. Although all commenters favored a rule allowing multiple class structures without the need for exemptive orders, most strongly opposed the proposed disclosure requirements. The Commission is adopting rule 18f–3 and related prospectus disclosure requirements with modifications that address the comments received. Rule 18f–3 allows funds flexibility in tailoring many aspects of their multiple class structures, overseen by the board of directors, while preserving investor protection conditions based on the exemptive orders and derived from the concerns underlying section 18. The Commission has reconsidered the disclosure aspects of the proposal in light of the strong opposition of the commenters, and is adopting much less extensive requirements than proposed. The rule and form amendments will give investors the means to obtain information about certain other classes or other feeder funds investing in the same master fund, but do not require extensive cross-disclosure in prospectuses and advertisements.

A. Rule 18f–3

The Commission is adopting rule 18f–3 to create a limited exemption from sections 18(f)(1) and 18(i)[8] for funds that issue multiple classes of shares with varying arrangements for the distribution of securities and provision of services to shareholders. Multiple class funds relying on existing exemptive orders would be allowed to use the rule but would not be required to do so.[9] The Commission has made several modifications to the rule in view of the comments received.

The rule largely codifies the exemptive order approach of addressing

[3] P.W. Coolidge, *Business Applications of the Hub and Spoke® Structure,* 1993 Mutual Funds & Investment Management Conference X–3 (Mar. 11, 1993); R.M. Phillips and C.E. Plaza, *Hub & Spoke® Mutual Funds,* 26 Securities & Commodities Regulation 137 (Aug. 1993). *See also ''Hub-and-Spoke'' Funds: A Report Prepared by the Division of Investment Management,* submitted with letter from Richard C. Breeden, Chairman, SEC, to John D. Dingell, Chairman, House Comm. on Energy and Commerce (Apr. 15, 1992).

[4] *See, e.g.,* Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds, Investment Company Act Release No. 19955 (Dec. 15, 1993), 58 FR 68074 (Dec. 23, 1993) [hereinafter Proposing Release].

[5] *See* Proposing Release, 58 FR at 68082 n.59; *see also* Jeff Kelly, *A Fine Mess,* Morningstar Mutual Funds, Nov. 25, 1994, at S1; Carole Gould, *Brokers' New Pitch; Level Load on Funds,* N.Y. Times, May 7, 1994, at 37 (''If investors are confused about which pricing method is best for them, it's no wonder''); Vanessa O'Connell, *Mastering the ABCs of Fund Shares,* Money, Sept. 1993 (''Counting A, B and C shares, analysts now predict that the number of fund options could double to a mind-numbing 8,000 within the next 18 months'').

[6] Proposing Release, *supra* note 4.

[7] The comment letters, as well as a comment summary dated Dec. 21, 1994 prepared by the Commission's staff, are available for public inspection and copying at the Commission's public reference room in File No. S7–32–93.

[8] 15 U.S.C. § 80a–18(f)(1) and –(i). Section 18(f)(1) generally makes it ''unlawful for any registered open-end company to issue any class of senior security.'' Section 18(g) defines senior security to include any stock of a class having a priority over any other class as to distribution of assets or payment of dividends. Section 18(i) requires that every share of stock issued by a registered investment company be voting stock, with the same voting rights as every other outstanding voting stock.

[9] Funds currently relying on exemptive orders that choose to operate instead under the new rule must first prepare plans under paragraph (d) of the rule and file copies of the plans with the Commission as exhibits to their registration statements under new Item 24(b)(18) of Form N–1A. Provided that no changes are made to arrangements and expense allocations under an existing order, paragraph (d) does not require board approval of the plan. A fund choosing to rely on an existing exemptive order, including one providing an exemption for ''future classes,'' may continue to do so, provided it complies with *all* of the conditions in the order (including the disclosure conditions); in addition, such a fund would also be subject to the disclosure requirements adopted today. *See* discussion at II.A.5. regarding the adoption of a multiple class plan under the rule.

the potential for conflicts among classes by limiting the permissible differences among classes in expenses and voting rights. It specifies permissible methods of allocating expenses, and allows the waiver of expenses by service providers. Rule 18f–3 also specifies the conditions under which shares of one class may be converted into or exchanged with shares of another class.

The rule requires the board of directors of a fund to approve a plan detailing each class's arrangement for the distribution of securities and the services provided to each class, and the payment of other expenses. The board must determine that the plan is in the best interests of each class individually and the fund as a whole.

1. Differences in Distribution and Shareholder Services

Under paragraph (a)(1)(i), classes must differ either in the manner in which they distribute their securities, or in the services they provide to their shareholders, or both. As under the proposal, distribution systems may differ in the amount or form of payment, or the nature or extent of services provided. A class that pays a front-end load, for example, differs from a class paying a rule 12b–1 fee [10] in a spread load or level load arrangement in the amount, the form (by shareholders individually versus the class as a whole), and timing (at purchase versus over time) of distribution charges.

Funds may also meet paragraph (a)(1)(i) by providing different services to the shareholders of each class. One commenter expressed concern that the requirement in proposed paragraph (a)(5) that all classes have the same rights and obligations would not permit differences among classes in services such as checkwriting.[11] Presumably, the commenter viewed the term ''shareholder service'' as encompassing only certain services provided to shareholders by banks, brokers, and other third parties detailed in the many multiple class exemptive applications, and not shareholder transaction services, such as checkwriting. The term ''shareholder services'' in the rule, however, encompasses both types of services.

2. Allocation of Expenses

a. Class Expenses. Under rule 18f–3, certain expenses must be allocated to individual classes, while others may be so allocated at the discretion of the fund's board of directors. Paragraph (a)(1)(i) provides that expenses relating to the distribution of a class's shares, or to services provided to the shareholders of that class, must be allocated to that class. Although this requirement was implicit in proposed paragraph (a)(1)(i), the text of the rule as adopted has been clarified to make it explicit.

Paragraph (a)(1)(ii) provides that other expenses (other than advisory [12] or custodial fees or other expenses relating to the management of the fund's assets, which must be allocated to all classes in accordance with paragraph (c)) may be allocated to different classes in different amounts to the extent that they are incurred by one class in a different amount, or reflect differences in the amount or kind of services that different classes receive.[13] This paragraph encompasses both differences in actual out-of-pocket expenses among classes (for instance, blue sky fees that are incurred for some classes but not others), and differences in charges when classes receive services that are different in kind or amount. For example, some classes may use transfer agency services differently than others. Thus, the rule contemplates that allocations may be based upon the level or kind of services used.[14]

The proposal requested comment on whether the rule should provide more specific limits on differential allocations of expenses. Commenters strongly supported the flexible approach taken in the proposal.[15] In particular, one commenter stated that ''[a] more rigid approach to expense allocation could undermine the utility of the exemptive rule.'' [16] Another endorsed the ''proposal to leave these determinations to the Directors.'' [17] A commenter stated that mandating certain expenses as class expenses could run afoul of Internal Revenue Service private letter rulings, which only permit *de minimis* differences among the expenses of different classes.[18]

At several commenters' suggestion, the Commission has revised paragraph (a)(1)(ii) to delete the word ''materially.'' Although the materiality qualifier in proposed paragraph (a)(1)(ii)(B) would have allowed boards of directors to avoid making allocation determinations for trivial differences in expenses, several commenters interpreted the requirement to mean that boards could not allocate expenses with immaterial differences at all.[19] Because paragraph (a)(1)(ii) is permissive, allocations of differential expenses, regardless of materiality, are at the board's discretion.

b. Allocation of Fund Income and Expenses. Paragraph (c) sets forth the allocation methods for income, realized and unrealized capital gains and losses, and expenses that are not assigned to a particular class. The proposal would have required that these items be allocated to each class based on the relative net assets. One commenter, however, argued that requiring allocations based on net asset value could result in the dilution of shareholders in daily dividend funds such as money market funds that permit investors to subscribe for shares, but not

[10] A rule 12b–1 fee is a charge to fund assets that may be used to pay certain distribution expenses in accordance with rule 12b–1 (17 CFR 270.12b–1) under the Investment Company Act.

[11] Letter from the Investment Company Institute to Jonathan G. Katz, Secretary, SEC 22 (Feb. 22, 1994).

[12] Under rule 18f–3, the investment advisory fee charged to each class generally must be the same percentage amount. In the case of a multiple class fund with an advisory contract that provides for compensation to the adviser on the basis of performance, paragraph (a)(1)(iii) clarifies that the percentage amount may vary for each class to the extent that any difference is the result of the application of the same performance fee provisions to the different investment performance of each class.

In addition, the Commission believes that it would also be consistent with section 205(b)(2) and rule 205–1 if a multiple class fund were to use the investment performance of a single class for the purpose of calculating the performance fee. In approving the use of a class, the board of directors of the fund should consider all of the relevant factors, including the proposed performance fee schedule, the effect that using one class instead of another would have on the fees to be paid, the anticipated relative size of each class, the expense ratio of each class, the effect of any waiver or reimbursement of expenses on the performance of that class, the nature of the index to which the fund's performance will be compared and, if the index is comprised of comparable funds, the average expense ratio of those funds. For instance, it would appear difficult for a board to justify basing the calculation of a performance fee on the performance of a class with the lowest expenses if the result would be that shareholders of another class would pay a higher advisory fee than would be warranted given that class's performance.

[13] The board should monitor whether the fund's allocations have complied with the requirements of paragraph (a)(1)(ii) when the board reviews the fund's plan. *See* section II.A.5., *infra.*

[14] Paragraph (a)(1)(ii) as adopted has been reworded to delete subparagraph (A) of the proposed rule text. Under proposed paragraph (a)(1)(A), expenses could have been treated as belonging to a class if they were directly related to the arrangement of that class for shareholder services or distribution. The proposal did not provide any guidance for determining whether an expense was ''directly related,'' nor did it explain how these expenses were to be distinguished from expenses of an arrangement under paragraph (a)(1)(i), or other expenses under paragraph (a)(1)(ii)(B). Therefore, the Commission has deleted this provision as unnecessary.

[15] *E.g.,* Letter from Ropes & Gray to Jonathan G. Katz, Secretary, SEC 7 (Feb. 21, 1994); Letter from Federated Investors to Jonathan G. Katz, Secretary, SEC 2 (Feb. 15, 1994).

[16] ICI Comment Letter, *supra* note , at 21.

[17] Letter from the American Bar Association to Jonathan G. Katz, Secretary, SEC 12 (Mar. 15, 1994).

[18] Letter from Fidelity Management and Research Company to Jonathan G. Katz, Secretary, SEC A–1 (May 13, 1994).

[19] *E.g.,* ICI Comment Letter, *supra* note 11, at 21.

pay for them with federal funds.[20] According to the commenter, because an investor's money is not available for investment by a fund until federal funds have been received, the payment of dividends to the investor before receipt of federal funds would dilute the holdings of other shareholders.[21]

Therefore, the rule as adopted allows different methods of allocation for daily distribution funds than for non-daily distribution funds. Non-daily distribution funds must allocate these items based on the relative net assets. Money market funds (including those calculating net assets on an amortized cost basis) and other funds making daily distributions of their net investment income may allocate these items to each share regardless of class,[22] or based on the relative net assets (settled shares).[23] The parenthetical reference in the rule to calculation of net assets using amortized cost recognizes that money market funds may allocate fund expenses based on the relative amortized cost net assets.[24] The allocation method selected by the fund must be applied consistently.

A commenter requested that the Commission provide guidance about the allocation of costs of implementing a multiple class structure.[25] If a fund is organized initially with a multiple class structure, these costs are part of the fund's organization expenses and usually are capitalized. Funds may allocate the amortization of these expenses among the classes like other expenses under paragraph (c) of the rule. If the class structure is added after the fund has been organized, or if new classes are added, these expenditures would not be capitalized. Instead, they would be expenses of the class or classes in existence before the addition of the class structure or the new classes,[26] and therefore would be recognized by, and allocated to, those existing classes as an expense under paragraph (c) and not charged to the new class or classes.[27]

c. Accountant's Report on System of Internal Control. The Commission is not adopting the proposed amendment to Form N–SAR, relating to an accountant's report on a fund's system of internal controls. As proposed, Item 77B would have required accountants preparing the report on a multiple class fund's system of accounting controls to refer expressly to the procedures for calculating the classes' net asset values. This provision was intended to replace the requirement in the exemptive orders that an expert file a separate report on the adequacy of accounting procedures of multiple class funds. One commenter supported the proposal's omission of a requirement for the expert's report as no longer necessary. It believed that the orders granted to date, and the additional guidance in rule 18f–3, adequately define the methodology that a fund should follow in allocating income, realized and unrealized capital gains and losses, and expenses of the company to a class of shares.[28] The commenter, however, disagreed with the proposal's requirement of a specific reference in the internal controls report to the procedures for calculating multiple class net assets, arguing that because the internal control structure, required to be reviewed by Statement on Auditing Standards No. 55,[29] includes the procedures for calculating multiple class net assets, the report required by Item 77B need not be modified to emphasize only one of the aspects of the internal control structure. The Commission believes that since under current accounting standards, a review of the fund's internal control structure must include a review of procedures for calculating multiple class net assets, it is unnecessary to require the independent accountant's report to include such a reference.

d. Waivers and Reimbursements of Expenses. As adopted, rule 18f–3(b) expressly allows a fund's underwriter, adviser, or other provider of services to waive or reimburse the expenses of a specific class or classes. The proposal would have permitted only waivers or reimbursements by the fund's adviser or underwriter of class expenses, and would not have permitted waivers or reimbursements for specific classes of fund expenses, such as advisory fees. Despite the prohibition on differential waivers of fund expenses, fund sponsors could have achieved the same result indirectly by waiving or reimbursing class expenses. Therefore, the Commission is deleting the restrictions on waivers in the final rule. This modification is not intended to allow reimbursements or waivers to become *de facto* modifications of the fees provided for in advisory or other contracts so as to provide a means for cross-subsidization between classes.[30] Consistent with its oversight of the class system and its independent fiduciary obligations to each class, the board must monitor the use of waivers or reimbursements to guard against cross-subsidization between classes.[31]

3. Voting and Other Rights and Obligations

The Commission is adopting the provisions relating to shareholder voting substantially as proposed.[32] These provisions elicited little comment. Paragraph (a)(2), which provides that each class must have exclusive voting rights on any matter submitted to

[20] Memorandum to file from Karrie McMillan regarding telephone conversation with Richard Peteka, Oppenheimer Management Corporation (May 11, 1994) (Peteka Comment Memorandum). The term ''net assets'' includes the value of any receivables, including subscriptions to purchase shares for which the fund has not yet received payment. *See* AICPA Audit Guide, *supra* note 26, at ¶ 2.22. Because daily distribution fund portfolio transactions settle daily against federal funds (in contrast to other securities that have ''regular way'' (*e.g.*, currently T+5) settlement), many of these funds only record income and expenses on their books for shareholders whose subscriptions have cleared in federal funds. *See* T. Rowe Price Associates, Inc. (pub. avail. Dec. 22, 1986). Thus, allocating on the basis of relative net assets would be in conflict with typical daily distribution fund allocations.

[21] According to the commenter, this problem is exacerbated when a large disparity exists between the size of the classes or feeder funds, as each subscription to the smaller class or feeder fund will be large relative to the size of the other classes or feeder funds, and will dilute the classes or feeder funds having greater assets. Peteka Comment Memorandum, *supra* note 20.

[22] Like some exemptive orders, paragraph (c)(2)(i) requires funds allocating these items equally to all shares regardless of class to obtain the agreement of their service providers that, to the extent necessary to assure that all classes maintain the same net asset value, the providers will waive or reimburse class expenses.

[23] The rule defines ''relative net assets (settled shares)'' to mean net assets valued in accordance with generally accepted accounting principles, but excluding the value of subscriptions receivable, in relation to the net assets of the fund.

[24] *See* Fidelity Comment Letter, *supra* note 18, at A–2.

[25] *Id.* at 3.

[26] *See* Financial Accounting Standards Board, Financial Accounting Standards No. 7, §§ 8 and 9, Accounting and Reporting by Development Stage Enterprises, and AICPA, Audits of Investment Companies: Audit and Accounting Guide ¶ 8.10 (May 1993).

[27] Organization expenses should be distinguished from other expenses, such as printing of prospectuses. These other non-organizational expenses may appropriately be capitalized and amortized in accordance with the provisions of generally accepted accounting principles. The amortization of these expenses would be allocated to all classes which benefit from the expense.

[28] Letter from the American Institute of Certified Public Accountants to Jonathan G. Katz, Secretary, SEC 2 (Mar. 18, 1994).

[29] Codification of Statements on Auditing Standards, American Institute of Certified Public Accountants, AU § 319 (1994).

[30] Rule 18f–3 is only a limited exemption from the literal application of the prohibitions of section 18 and may not be used to undermine that section's role in effecting the statutory purpose of preventing the issuance of ''securities containing inequitable or discriminatory provisions.'' 15 U.S.C. § 80a–1(b)(3).

[31] *See infra* section II.A.5.

[32] Paragraphs (a)(2) and (a)(3) of the final rule were paragraphs (a)(3) and (a)(4), respectively, in the rule as proposed. They have been renumbered as a result of the transfer of certain provisions of proposed paragraph (a)(2) into paragraph (b) of the final rule.

shareholders that relates solely to the arrangement of that class, governs which class of shareholders may vote on a matter, but does not affect whether the matter is one that requires a shareholder vote. Paragraph (a)(3) requires that each class have the right to vote separately on matters in which its interests are different from those of other classes.

The Commission is adopting as proposed paragraph (a)(4), which states that except as provided in the previous paragraphs, each class of a fund relying on the rule must have the same rights and obligations as each other class.[33] Among other things, this paragraph effectively requires multiple class funds to allocate voting rights that affect all fund shareholders equally to all shareholders. The Commission had requested comment on whether to require that voting be allocated based on relative net asset value per share, rather than one vote per share.[34] All of the commenters addressing the issue opposed such a requirement. These commenters suggested that the proposal's more flexible approach of allowing a fund to select the method most suitable for it would provide the best result for each fund.[35] Several commenters noted that many funds would be required to hold shareholder meetings in order to amend their charters to comply with such a requirement, thus incurring additional expense.[36] Therefore, the Commission is not requiring voting based on relative net asset value per share, but believes that such voting is permissible under section 18(i) of the Investment Company Act.[37]

4. Exchange Privileges and Conversions

The Commission is adopting provisions relating to conversions and exchanges of shares substantially as proposed.[38] The rule as adopted also includes a provision allowing conversions when a shareholder is no longer eligible to invest in a particular class.[39]

Paragraph (e)(1) allows funds to offer different exchange privileges to different classes.[40] Paragraph (e)(2) permits funds to offer one or more classes with conversion features that allow for automatic conversions into another class after a specified period, if the conversions are made at net asset value without the imposition of any sales load, fee or other charge upon the conversion. As suggested by a commenter, paragraph (e)(2) as adopted provides that total expenses (not just those associated with a rule 12b–1 plan) may not be higher for the new class than for the old class.[41]

The Commission has added paragraph (e)(3), which allows, under limited circumstances, conversions that occur whenever a shareholder ceases to be eligible to invest in a class. Unlike paragraph (e)(2), this provision does not require that the new class have the same or lower expenses. A commenter objected that the expense limitation in paragraph (e)(2) would not accommodate situations in which a shareholder may no longer be eligible to participate in the class in which he or she originally invested, and therefore need or wish to be placed into a class that may have higher expenses.[42] For example, an investor in a class offered only to trust customers may cease to be a trust customer, and thus no longer be eligible to invest in that class.[43] In this event, the commenter suggested that the rule permit the new class to assess higher rule 12b–1 fees. Paragraph (e)(3) allows these conversions to occur, if the conversion is effected at net asset value without the imposition of any sales load, fee, or other charge upon the conversion and the investor is given advance notice of the conversion.

5. Board Review of Plans

The Commission is adopting paragraph (d), governing the adoption and approval of multiple class plans by boards of directors, with modifications in view of comments received. Rule 18f–3 gives the board of directors, particularly the independent directors, significant responsibility to approve a fund's plan and oversee its operation. Paragraph (d) requires that a fund adopt a written plan specifying all of the differences among classes, including the various services offered to shareholders, different distribution arrangements for each class, methods for allocating expenses relating to those differences, and any conversion features or exchange privileges.[44] The plan should provide a detailed statement of the differences among the classes.

The rule requires that the board, including a majority of the independent directors, find that the plan is in the best interests of each class individually and the fund as a whole.[45] This approval requirement replaces the several board reviews under the exemptive orders. The orders required boards of directors to approve the issuance of multiple classes of shares, review and approve specific allocations of class expenses,

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[33] This provision was paragraph (a)(5) in the rule as proposed.

[34] *See* footnote 42 of the Proposing Release.

[35] *E.g.*, ICI Comment Letter, *supra* note 11, at 22; Fidelity Comment Letter, *supra* note 18, at A–2 (Fidelity stated that dollar-based voting may not be consistent with state law).

[36] *E.g.*, Letter from the Chicago Bar Association, Subcommittee of the Securities Law Committee to Jonathan G. Katz, Secretary, SEC 3 (Feb. 21, 1994); Letter from Federated Investors to Jonathan G. Katz, Secretary, SEC 3 (Feb. 15, 1994).

[37] *See* Sentinel Group Funds, Inc. (pub. avail. Oct. 27, 1992) (under section 18(i), voting rights of different series in a fund may be tied to the relative net asset value of each series to avoid vesting unfair voting power in series with per share net asset values that are significantly lower than those of other series). In discussing the meaning of ''equal voting rights'' under section 18(i), the Commission has noted that:

Problems of interpretation may very well arise from defining with exactitude what constitutes ''equal voting rights'' within the meaning of Section 18(i). It is apparent that in certain cases an inflexible adherence to any rigid interpretation could produce grave distortions of the apparent intent of Congress to require a reasonably equitable distribution of voting power consistent with the applicable provisions pertaining to the different classes of stock. *The Solvay American Corp.*, 27 SEC 971, 974 n.9 (1948).

The Commission also believes that voting based on relative net asset value is consistent with the definition of ''the vote of a majority of the outstanding voting securities'' in section 2(a)(42) of the Investment Company Act [15 U.S.C. § 80a–2(a)(42)]. That provision does not specify whether the prescribed percentages are to be determined on the basis of the number of securities, or the value of the securities.

[38] Exchanges are subject to section 11 of the Investment Company Act and the rules thereunder. *See* 15 U.S.C. § 80a–11(a); 17 CFR 270.11a–1, –2 and –3 (requiring offers of exchange to be made on the basis of net asset value, with certain exceptions).

[39] The Commission also is amending Form N–1A to require prospectus disclosure for multiple class funds allowing or requiring conversions or exchanges between classes. *See infra* section II.C.3. for a discussion of the amendment.

[40] For example, when shares of one class of a fund may be exchanged for shares of the same class in another fund, but not for shares of other classes.

[41] ICI Comment Letter, *supra* note 11, at 23–24.

[42] Letter from Hale and Dorr to Jonathan G. Katz, Secretary, SEC 7 (Feb. 22, 1994). *See* Ark Funds, Investment Company Act Release Nos. 19812 (Oct. 22, 1993), 58 FR 58025 (Oct. 28, 1993) (Notice of Application), and 19882 (Nov. 17, 1993), 55 SEC Docket 1541 (Order) (allowing automatic conversions when a shareholder in one class becomes ineligible to purchase shares of the class originally held); Federated Securities Corp. (pub. avail. Jan. 14, 1992) (permitting shareholders to switch from one class to another class where, because of a change in circumstances, such shareholders would no longer be eligible to invest in a particular class of shares).

[43] Although some fees may be lower for classes whose shareholders have certain other relationships with a financial institution that provides services to fund shareholders, these investors may also be paying other fees directly to the institution in addition to paying expenses at the fund level.

[44] Forms N–1A and N–14 have been amended to require that a copy of the plan be filed as an exhibit to the forms.

[45] In making its findings, the board should focus, among other things, on the relationship among the classes and examine potential conflicts of interest among classes regarding the allocation of fees, services, waivers and reimbursements of expenses, and voting rights. Most significantly, the board should evaluate the level of services provided to each class and the cost of those services to ensure that the services are appropriate and that the allocation of expenses is reasonable.

monitor for conflicts of interest among classes and take any action necessary to eliminate conflicts.

Paragraph (d) as adopted requires the board to approve a plan initially and before any material change. The Commission is not requiring annual approval of the board, which was proposed. Many commenters objected to the annual review requirement and argued that it runs counter to the Commission's recent elimination of certain annual review requirements.[46]

Paragraph (d) as adopted does not require the board to approve the initial adoption of a plan if the plan merely reproduces without change a fund's existing multiple class structure that the board has approved under an existing exemptive order. One commenter requested that the Commission amend the rule to clarify that board approval is not required for existing classes that intend to rely on the rule if the board has already approved a multiple class structure under an order.[47] Although the rule as adopted does not require a vote of the board of directors under these circumstances, a fund with an existing order that seeks to rely on rule 18f–3 must create a plan setting forth the fund's current separate arrangements, expense allocation procedures and exchange and conversion privileges[48] and file a copy of the plan with the Commission as an exhibit to the fund's registration statement under new Item 24(b)(18). These plans create a cohesive structure for monitoring the operation of the class system, rather than having procedures scattered among exemptive orders and their amendments, prospectuses and internal guidelines, and the formulation of a plan from these source materials should not impose a significant burden.

Finally, the rule text as adopted omits the proposed requirement that boards find that plans are ''fair.'' This change recognizes that the term was not a condition of the exemptive applications, and that the requirement that a board find a plan to be in the best interests of each class individually and of the fund as a whole provides the same protection as a separate fairness requirement.

[46] *E.g.,* ABA Comment Letter, *supra* note 17, at 4; Federated Investors Comment Letter, *supra* note 15, at 2; Hale and Dorr Comment Letter, *supra* note 42, at 4–5; ICI Comment Letter, *supra* note 11, at 23; Letter from Dechert Price & Rhoades to Jonathan G. Katz, Secretary, SEC 2 (Feb. 22, 1994). *See* Proposing Release at 21 n.48, 58 FR at 68080 n.48, for a discussion of recent Commission actions to reduce the burdens on boards of directors.

[47] ICI Comment Letter, *supra* note 11, at 23.

[48] Board approval of the plan is required, though, if it contains any material deviations from current practice.

B. Rule 12b–1

The Commission is adopting new paragraph (g) of rule 12b–1 substantially as proposed. It provides that if a plan covers more than one class of shares, the provisions of the plan must be severable for each class, and any action taken on the plan must be taken separately for each class. The board would be required to make the finding, separately for each class, that a distribution plan presents a ''reasonable likelihood of benefit'' to the company and its shareholders. Similarly, the amendment requires shareholder approval by the outstanding voting securities of each separate class when rule 12b–1 requires that a plan for the distribution of securities be approved by a majority of the fund's outstanding voting securities. Paragraph (g) also contains a cross-reference to rule 18f–3 to address the limited exception that under paragraph (e)(2) of that rule, any shareholder vote on the rule 12b–1 plan of a target class would also require a separate vote of any purchase class.[49]

C. Disclosure

The Commission is adopting disclosure requirements for registration statements of master-feeder and multiple class funds with substantial modifications from the proposal, and is not adopting any disclosure requirements for advertisements and sales literature.[50] New Item 6(h) provides that multiple class and master-feeder funds should describe the salient features of the multiple class or master-feeder structure. Feeder funds should also disclose the circumstances under which the feeder fund could no longer invest in the master fund, and the consequences to shareholders of such an event. Item 6(h) also requires prospectuses used in connection with a public offering to disclose that there are other classes or other feeder funds that invest in the same master fund, and to include a telephone number investors can call to obtain additional information about other classes or feeder funds available through their sales representative.[51] These provisions should give funds flexibility in drafting disclosure while making available to investors the means to obtain additional information about other classes or feeder funds investing in the same master fund. These disclosure requirements are consistent with the Commission's goals of promoting prospectus simplification and the use of plain language.[52]

Funds must provide more extensive prospectus disclosure about other classes or feeder funds only in two cases. First, under new staff Guide 34 to Form N–1A, if a prospectus offers more than one class or feeder fund, it must discuss briefly the differences between the classes or feeder funds, and arrange the fee table to facilitate a comparison by shareholders of the different fee structures.[53] Second, under new General Instruction I to Form N–1A, if a fund is offering a class that will or may convert or be exchanged into other classes of the same fund, the prospectus must provide disclosure about the other classes.

The Commission is not adopting most of the proposed disclosure requirements; nearly all commenters expressed strong opposition to the extent and the details of these requirements.[54] As discussed in more detail below, commenters argued, among other things, that the proposed requirements would have imposed liability burdens and logistical difficulties on some funds.

The Commission recognizes that the complexity of distribution charge

[49] In light of the adoption of new paragraph (e)(3) of rule 18f–3, the Commission has modified rule 12b–1(g) from the proposal to limit the cross-reference to paragraph (e)(2). Whereas conversions under paragraph (e)(2) will occur if shareholders remain in a class for a specified period of time, conversions under paragraph (e)(3) will not occur except upon the happening of a specified contingency that is dependent upon the shareholder. Therefore, a vote of the class of shares that may convert is not required.

[50] In view of commenters' objections and recent industry initiatives, the Commission also is not imposing standardized class designations upon multiple class funds. *See* Memorandum of the ICI, Board of Governors Adopts Voluntary Nomenclature Standards of Multiple Class Funds (May 16, 1994); Jeff Kelly, *A Fine Mess,* Morningstar Mutual Funds, Nov. 25, 1994, at S1; ICI Comment Letter, *supra* note 11, at 19.

[51] This disclosure requirement was proposed as part of Instruction 1 to Item 2(a) of Form N–1A. Multiple class funds must comply with the disclosure requirements adopted today regardless of whether they rely on rule 18f–3 or continue to operate under and comply with all of the terms (including disclosure-related conditions) of an existing exemptive order. The disclosure requirements adopted today also do not alter feeder funds' existing disclosure obligations. Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, to Registrants (Feb. 22, 1993), Comment II.H (hereinafter ''1993 Generic Disclosure Comment Letter''). New Instruction 4A to Item 2(a) of Form N–1A codifies the requirement that the expenses of both the master fund and the feeder fund be reflected in a single fee table.

[52] *See, e.g.,* Arthur Levitt, Chairman, SEC, Taking the Mystery Out of the Marketplace: The SEC's Consumer Education Campaign, remarks before the National Press Club (Oct. 13, 1994).

[53] Funds may either use one fee table with separate and clearly labeled columns for each class or feeder fund, or may prepare separate fee tables for each class or feeder offered.

[54] A few commenters, however, supported requiring disclosure about other classes or feeder funds. *See, e.g.,* Hale and Dorr Comment Letter, *supra* note 42, at 8; Dechert Price Comment Letter, *supra* note 46, at 3.

options can be confusing to some investors. Instead of relying on prospectus disclosure, however, the Commission is addressing these concerns through consumer education and the promotion of good sales practices. In the proposal, the Commission requested comment on whether, instead of requiring extensive prospectus disclosure, it should work with the National Association of Securities Dealers, Inc. (''NASD'') to develop standards for basic information that representatives should communicate to their clients. Several commenters endorsed this approach as an alternative to cross-disclosure.[55] The Commission staff has been working, and will continue to work, with the NASD on providing guidance about the duties of sales representatives when recommending the purchase of multiple class and master-feeder funds.[56] Finally, the Commission expects to promote consumer education in this area through the development and publication of a brochure explaining the structures and expenses of multiple class and master-feeder funds.[57]

1. Prospectus Disclosure Concerning Other Classes or Feeder Funds

The Commission is adding new Item 6(h) to Form N–1A [58] to require prospectuses for multiple class and master-feeder funds to describe the salient features of the multiple class or master-feeder structure. In addition, Item 6(h) requires prospectuses of multiple class or master-feeder funds to include disclosure about other publicly offered [59] classes or feeder funds, unless all classes or all feeder funds are offered through the same prospectus.[60] A fund must disclose that it issues other classes or that other feeder funds invest in the master fund, and that the other classes or feeder funds may have different sales charges and expenses, which would affect performance. The disclosure must also provide a telephone number investors may call to obtain information concerning other classes or feeder funds available through their sales representative, and note that investors may obtain information concerning those classes or feeder funds from (as applicable) their sales representative, or any person, such as the principal underwriter, a broker-dealer or bank, which is offering or making available to them the securities offered in the prospectus. This disclosure should provide investors with access to information allowing them to compare the expenses and services of a given class or feeder fund to others that are available to them.

Although commenters strongly opposed the more extensive disclosure requirements in the proposal, they generally agreed that it is ''appropriate to require some disclosure as to the fact that there are other classes or feeder funds investing in the underlying portfolio.'' [61] Many agreed that alerting investors to the relationship between expenses and performance is appropriate.[62]

The Commission is not specifying how fund sponsors must respond to investors' calls. Unlike the requirements adopted today, the proposal would have required the statement to include the names of the other classes or feeder funds, and an undertaking to provide information over a toll-free number, and provide a prospectus for the other classes or feeder funds upon request. Commenters, however, vehemently objected to the proposed undertaking to provide additional information and prospectuses for other classes or feeder funds.[63] One commenter stated that independent mutual fund groups and their sponsors may be disproportionately affected by the undertaking. ''Whereas the toll-free number provided by broker-sponsored mutual funds will likely have to answer questions only about (and provide prospectuses for) that particular broker's family of funds, the Release imposes upon an independent mutual fund sponsor with a master-feeder structure the much broader obligation to provide information * * * about any other entity's proprietary feeder funds feeding into the same master fund.'' [64] Several commenters objected to the toll-free number requirement.[65] The Commission is continuing to require the inclusion of a telephone number, but is not requiring that the number be toll-free; the requirement of a telephone number is consistent with the disclosure guidelines of the Commission staff and state regulators, to which master-feeder funds are already subject. By not requiring any specific procedures with callers, the Commission is leaving fund sponsors the flexibility to determine how best to respond to inquiries.

A commenter noted that compliance with the proposed requirement to name other classes or feeder funds would be difficult for unaffiliated feeder funds; they would be required to keep abreast of the creation of or changes to other feeder funds and sticker their prospectuses to reflect such changes.[66] A commenter also speculated that mentioning feeder funds in states where they are not registered could create problems under state securities laws because such a statement could be considered to be an offer.[67]

The disclosure requirement that the Commission is adopting is similar to the recommendations of some commenters. For example, one commenter suggested that the Commission require a narrative following the fee table stating that (i) the fund issues other classes or feeder funds that invest in the master fund; (ii) because sales charges and expenses vary, performance may also vary; and (iii) the customer may call a toll-free number to obtain further information

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[55] *E.g.,* Signature Group Comment Letter, *supra* note 59, at 14–15; ABA Comment Letter, *supra* note 17, at 10; Letter from the Investment Company Institute (attaching memorandum from Kirkpatrick and Lockhart) to Matthew A. Chambers, Associate Director, Division of Investment Management, SEC (Oct. 6, 1994).

[56] Since the proposal, the NASD has reminded members of ''their obligations to ensure that the investments are suitable for their customers and to disclose and discuss certain matters in the sale of mutual funds.'' These matters include the disclosure of ''all material facts to the customer'' and, in particular, sales charges. Notice to Members 94–16 (Mar. 1994).

[57] The Commission has previously published two brochures providing general information about investing.

[58] 17 CFR 239.15A, 274.11A.

[59] Item 6(h) refers to any publicly offered class or feeder fund; thus, no disclosure is required, for example, about offshore or private funds. *See, e.g.,* Letter from Kirkpatrick & Lockhart on behalf of Signature Financial Group and certain other companies to Jonathan G. Katz, Secretary, SEC 11–12 (Mar. 18, 1994) (expressing concern about disclosure regarding offshore funds), ICI Comment Letter, supra note 11, at 11 (expressing concern that disclosure would be required about private feeder funds).

[60] This requirement is more like the disclosure currently provided by master-feeder funds than that required under the exemptive orders for multi-class funds. The requirements adopted today treat multiple class and master-feeder disclosure in a consistent manner.

[61] ABA Comment Letter, *supra* note 17, at 8; *see also* Chicago Bar Comment Letter, *supra* note 36, at 2.

[62] *See, e.g.,* Hale and Dorr Comment Letter, *supra* note 42, at 9; Signature Group Comment Letter, *supra* note 59, at 5.

[63] *E.g.,* ABA Comment Letter, *supra* note 17, at 8–9; Signature Group Comment Letter, *supra* note 59, at 10; ICI Comment Letter, *supra* note 11, at 13 (''[s]uch a proposal ignores market realities, and would greatly limit the very benefits of multiple class and master-feeder structures that the Commission has itself commented on.'').

[64] Eaton Vance Comment Letter, *supra* note 66, at 8.

[65] *See* Chicago Bar Comment Letter, *supra* note 36, at 2 (a toll-free number should not be required); Fidelity Comment Letter, *supra* note 18, at 2 (the proposal's toll-free number requirement would cause an issuer to deal directly with investors, when it intended to sell through intermediaries, ''effectively chill[ing] the use of multi-class and feeder funds'').

[66] Signature Group Comment Letter, *supra* note 59, at 10. *See also* Letter from Eaton Vance Management to Jonathan G. Katz, Secretary, SEC 4 (Feb. 24, 1994).

[67] Eaton Vance Comment Letter, *supra* note 66, at 4 n.4.

about the other funds not offered through the prospectus but available through the same financial intermediary. The commenter also recommended that the prospectus should contain prominent disclosure recommending that the investor contact his or her broker or financial adviser for further information about suitable classes or feeder funds offered by the intermediary.[68]

Commenters suggested the above approach as an alternative to the proposed cross-disclosure requirements, which commenters strongly criticized and which the Commission is not adopting. The proposal would have required a prospectus for one class or feeder fund to provide full cross-disclosure [69] about all other classes or all other feeder funds investing in the same master fund that were not offered in the prospectus and that met two conditions. First, the classes or feeder funds had to be offered through the same financial intermediary.[70] Second, they had to permit investors to choose among alternative arrangements for sales and related charges.[71]

Many commenters argued that cross-disclosure would not achieve the Commission's goal of promoting investor understanding of multiple class and master-feeder funds because of the volume of disclosure that the proposal might require, arguing that ''the disclosure requirements of the Proposal run counter to the staff's professed desire for prospectus simplification and the desire to avoid 'prospectus creep.' '' [72] Several commenters cautioned that if the Commission adopted the proposed disclosure requirements, sponsors would not use the master-feeder form and would create ''less efficient and more expensive clone funds.'' [73] One commenter representing a fund family that offers both no-load and broker-sold products objected to requiring brokers to disclose that the same fund is available without a sales charge, arguing that if a client receives advice from a broker, the broker deserves to be paid for those services.[74]

Some commenters strongly criticized the proposal for requiring an issuer to provide prospectus disclosure about securities it does not intend to offer through that prospectus. Several expressed concern that feeder funds would have to assume liability for disclosure about unrelated feeder funds even though they are distinct entities and may have different advisers, underwriters, and boards of directors.[75]

Commenters also criticized the financial intermediary test—one of the proposal's two triggers for cross-disclosure.[76] One commenter stated, for example, that ''[t]he Proposal erroneously assumes that all financial intermediaries are homogeneous organizations, serving only a single market or customer base.'' [77] Much of the commenters' concern centered on the effect of the proposed requirement on independent sponsors of feeder funds and on financial intermediaries with more than one distribution network. One commenter noted that ''feeder funds, unlike different classes of shares, often are organized to serve customers of unaffiliated third party banks, insurance companies or brokerage firms who are competitors of each other and, in many cases, of the master fund.'' [78]

One independent sponsor of mutual funds argued that the proposal would create unique problems for independent mutual fund groups, and would discourage brokers from offering funds if prospectuses must describe funds offered by unaffiliated brokers.[79] This commenter asserted that fund sponsors would have to create a different prospectus for each possible combination of the different classes or feeder funds that in theory a broker might offer; therefore, the preparation of numerous prospectuses would create increased costs for these funds and an ''administrative nightmare'' for their sponsors, while in-house master-feeder or multiple class funds and their sponsors would not face comparable burdens.

The disclosure requirement as adopted addresses the commenters' concerns. The disclosure that investors may ask their sales representatives about other classes or feeder funds should alleviate the concern that the disclosure would encourage investors to deal directly with issuers, rather than their intermediaries. This dialogue should further investor understanding of the different fee arrangements or distribution possibilities associated with the fund without imposing a burden on issuers. Retaining a telephone number requirement, but not requiring the other disclosure or obligations should provide investors with a source for obtaining more information about other classes or feeder funds available through their sales representative without raising the practical concerns voiced by many commenters. Not requiring cross-disclosure about other classes or feeder funds not offered through the prospectus removes the logistical and competitive concerns voiced by many commenters. This approach is also consistent with the Commission's goals of promoting prospectus simplification.

2. Discussion of Classes or Feeder Funds Offered in Prospectus

New staff Guide 34 to Form N–1A requires a discussion of the differences between classes or feeder funds whenever two or more classes or feeder funds are offered through the same prospectus. In addition, new Guide 34 advises that if a single prospectus is used to offer more than one class or feeder fund, and the classes or feeder funds have different expense and/or sales load arrangements, the prospectus should clearly explain the differences in the features, and should provide a separate response to Item 2(a)(i) for each class or feeder. These requirements are

[68] *Id.* at 9.

[69] Disclosure responding to Items 2 through 9 of Form N–1A.

[70] The Proposing Release listed as examples of ''financial intermediaries'' brokers, dealers, banks and any other entities that act as agents or principals in the sale of a fund's shares, or that, like some banks, provide shareholder services under an agreement with a fund. *See* 58 FR 68083, n.69.

[71] Although the Commission is not adopting the proposed cross-disclosure requirement, it believes that disclosure about more than one class or feeder fund in the same prospectus can be consistent with clear, simple, and effective disclosure and prospectus simplification. Similarly, Guide 34 expressly contemplates that more than one class or feeder fund may be offered in the same prospectus. *See* discussion of Guide 34, *infra* at section II.C.2.

[72] Chicago Bar Comment Letter, *supra* note 36, at 2; *see also* ICI Comment Letter, *supra* note 11, at 5–7; Signature Group Comment Letter, *supra* note 59, at 6–8 (disputing the proposal's assumption that investor confusion about these instruments ''is a serious and widespread problem'').

[73] *E.g.*, Signature Group Comment Letter, *supra* note 59 at 5; *see also* letter from Fidelity Investments to Barry Barbash, Director, Division of Investment Management, SEC 1–2 (July 22, 1994).

[74] *See* Letter and memorandum from Robert Pozen, General Counsel and Managing Director, FMR Corp. to Arthur Levitt, Chairman, SEC 2 (Nov. 18, 1994) (''This would be the equivalent of requiring Filenes to tell all of its customers that the same goods may be purchased at a discount in the basement or from a competitor.'').

[75] *E.g.*, ICI Comment Letter, *supra* note 11, at 7. *See also* ABA Comment Letter, *supra* note 17, at 8–9; Signature Group Comment Letter, *supra* note 59, at 5 and 9 (''[s]uch a requirement of disclosure about products offered by competitors and the assumption of liability for such disclosures would be entirely unprecedented in the securities industry'') (emphasis deleted).

[76] The proposal would have required cross-disclosure only about classes or feeder funds both offered through the same financial intermediary and with alternative arrangements for sales and related charges, and made clear that not all cases would involve alternative arrangements. *See* text accompanying notes 70–72 of the Proposing Release, 58 FR at 68083. Most commenters, however, appeared to assume that there would be alternative sales charges in all cases.

[77] Signature Group Comment Letter, *supra* note 59, at 5.

[78] *Id.* at 8.

[79] Eaton Vance Comment Letter, *supra* note 66.

intended to inform investors about the differences between the investment options offered together to them.

The proposal would have required that whenever a prospectus offered two or more classes or feeder funds, or provided cross-disclosure about one or more classes or feeder funds, it must also contain a discussion of the differences between the classes or feeder funds. This aspect of the proposal elicited little comment. The proposal also would have required a line graph comparing the feeder funds' or classes' performance over a hypothetical ten-year period, assuming an initial investment of $10,000 and a 5% rate of return.[80] The Commission intended that the graph demonstrate the circumstances under which holding shares of each class or feeder fund for various lengths of time would produce the highest return. The Commission is not adopting this aspect of the proposal. The narrative discussion called for by Guide 34 should provide investors with similar information. Moreover, the line graph proposal was predicated upon the cross-disclosure requirement, which the Commission is not adopting.

The proposed line graph met with significant opposition from a number of commenters, many of which conjectured that it could mislead investors into believing that the ''market always goes up.'' [81] One commenter expressed concern that the graph creates a ''significant potential for litigation.'' [82] Another commenter observed that, except for variable life illustrations, ''the Commission has not previously used these investment assumptions to project hypothetical future performance.'' [83] Many commenters raised numerous concerns regarding the accuracy of the graphs given the myriad redemption possibilities, expenses, sales charges, and exchange privileges.[84] A commenter also argued that much of the information would duplicate disclosure in the fee table, and thus would be contrary to the goal of prospectus simplification.[85]

3. Discussion of Classes Into Which Shares May Convert or Be Exchanged

The Commission is adopting new General Instruction I to Form N–1A. This Instruction states that multiple class funds that provide for conversions or exchanges of shares from one class to another should provide disclosure in the prospectus about all other classes into which the shares may be converted or exchanged. Although Instruction I does not specify a particular format, it states that the disclosure should be designed to aid investor comprehension, and when appropriate, should use tables, side-by-side comparisons, or other parallel presentations to assist an investor's understanding of the other class or classes.

4. Advertising and Sales Literature

The Commission is not adopting requirements for advertisements or sales literature about multiple class or master-feeder funds. The Commission had proposed amending rules 134 and 482 under the Securities Act and rule 34b–1 under the Investment Company Act to require multiple class and master-feeder fund advertisements to contain a prominent legend substantially similar to that proposed for prospectus disclosure. In addition, the Commission had proposed amending rules 482 and 34b–1 to require multiple class and master-feeder fund advertisements that contain performance figures to include, with equal prominence, the performance of all classes and feeder funds that would have been subject to the proposed prospectus cross-disclosure requirement. The proposal would also have required that when an advertisement contains performance figures for a class or feeder fund for which average annual total return information is not available for one, five, and ten year periods, and this information is available for another class, feeder or master fund, then the advertisement must include quotations of average annual total return for the securities of the other class, feeder or master fund together with any necessary explanation.

Commenters opposed the requirement of disclosure about other classes or feeder funds in advertisements.[86] One stated that ''[i]n many respects, these requirements are so onerous that they are unworkable'' and that ''[t]he volume of disclosure required by the Proposal and the equal prominence requirement would make advertising prohibitively expensive as well as highly impractical for funds in the master-feeder fund structure.'' [87] Some commenters objected to the requirement because of the amount of space the disclosure would occupy in an average advertisement.[88]

In view of those objections, the Commission has determined not to adopt the proposed advertising disclosure requirements.[89] Instead, the Commission will address disclosure of performance under the general anti-fraud provisions of the federal securities laws [90] and expects that the staff will continue to address issues relating to performance disclosure on an interpretive or no-action basis.[91]

D. Effective Dates

Rule 18f–3 and the amendment to rule 12b–1 will become effective April 3, 1995. Registration statements and post-effective amendments filed with the Commission after April 3, 1995 must be in compliance with the amendments to Forms N–1A and N–14.

III. Cost/Benefit of the Proposals

Rule 18f–3 and the rule and form amendments adopted today should impose less of a reporting or recordkeeping burden and less regulatory compliance cost on multiple class funds than those imposed by the multiple class exemptive orders. Under rule 18f–3 and the form amendments,

[80] Both of these requirements would have been contained in a new Item 6(h) of Form N–1A.

[81] Chicago Bar Comment Letter, *supra* note 36, at 3; *See also* Signature Group Comment Letter, *supra* note 59, at 16; Fidelity Comment Letter, *supra* note 18, at 2.

[82] Federated Investors Comment Letter, *supra* note 15, at 3.

[83] Chicago Bar Comment Letter, *supra* note 36, at 2–3.

[84] *E.g.*, Signature Group Comment Letter, *supra* note, 59, at 15–16; ICI Comment Letter, *supra* note 11, at 15–16 (the ICI also suggested that the line graph requirement could pose problems for EDGAR filers, since the EDGAR system cannot recognize more than a limited set of characters, *id*. at 16 n.20).

[85] Letter from IDS Financial Corporation to Jonathan G. Katz, Secretary, SEC 2 (Feb. 22, 1994). *See also* ICI Comment Letter, *supra* note 11, at 14.

[86] *See, e.g.*, Fidelity Comment Letter, *supra* note 18, at 3 (''cross-disclosure is particularly burdensome in advertisements''); ICI Comment Letter, *supra* note 11, at 17–18.

[87] Signature Group Comment Letter, *supra* note 59, at 16–17.

[88] *Id.*; ICI Comment Letter, *supra* note 11, at 17–18 (the expense of cross-disclosure, together with the equal prominence requirement, would place multiple class and master-feeder funds at a competitive disadvantage).

[89] Footnote 88 in the proposing release erroneously stated that ''rule 134 advertisements, however, may include rankings based on performance data.'' 58 FR at 68085, n.88. Rule 134 advertisements may not contain performance rankings.

[90] Therefore, funds relying on rule 18f–3 will not be required to quote the performance of all classes when they quote performance in advertisements under rule 482, as was required generally under the exemptive orders. The Commission cautions multiple class funds to use care not to mislead investors in advertising the performance of one class when multiple classes are being offered to the same persons. For example, it may be misleading to quote only performance of a class for institutional or inside investors (with low expenses) in a publication with a retail readership.

[91] *See, e.g.*, IDS Financial Corp. (pub. avail. Dec. 19, 1994) (allowing a multiple class fund to calculate standardized total return of a new class following a merger based upon the performance of the acquiring (and surviving) fund, adjusted to reflect differences in the sales load, but not differences in rule 12b–1 fees).

multiple class funds would be subject to fewer disclosure requirements and lower costs than under the exemptive orders. Any additional time required to comply with the rule's written plan requirement should be minimal because multiple class funds already would have to commit material class differences to writing in order to enter into distribution or service agreements, or to disclose their terms. The prospectus disclosure should impose little burden, and in fact requires less disclosure than currently required for multiple class funds. The disclosure is similar to that presently required for master-feeder funds, and thus should impose little or no additional burden on those funds.

The amendment to rule 12b–1 should not impose any additional costs because it essentially would incorporate in the rule existing requirements in the exemptive orders for multiple class funds.

IV. Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by writing to Karrie McMillan, Esq., Division of Investment Management, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W. 20549.

V. Statutory Authority

The Commission is adopting rule 18f–3 under the authority in sections 6(c), 18(i), and 38(a) of the Investment Company Act [15 U.S.C. §§ 6(c), 18(i), and 37(a)], and the amendment to rule 12b–1 under section 12(b) of the Investment Company Act [15 U.S.C. § 12(b)]. The Commission is adopting the amendments to Form N–1A under sections 6, 7(a), 10 and 19(a) of the Securities Act [15 U.S.C. 77g(a), 77j, and 77s(a)], and sections 8(b), 24(a), and 38(a) of the Investment Company Act [15 U.S.C. §§ 80a–8(b), 24(a), and 37(a)], and the amendments to Form N–14 under sections 6, 7, 8, 10 and 19(a) of the Securities Act [15 U.S.C. 77f, 77h, 77j and 77s(a)] and sections 14(a), 14(c) and 23(a) of the Exchange Act of 1934 [15 U.S.C. 78n(a), 78n(c) and 78w].

VI. Text of Adopted Rule and Rule and Form Amendments

List of Subjects in 17 CFR Parts 239, 270, and 274

Investment Companies, Reporting and record keeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1, *et seq.,* 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. Section 270.12b-1 is amended by adding paragraph (g) to read as follows:

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

* * * * *

(g) If a plan covers more than one class of shares, the provisions of the plan must be severable for each class, and whenever this section provides for any action to be taken with respect to a plan, that action must be taken separately for each class, *provided, however,* that under § 270.18f–3(e)(2), any shareholder vote on a plan of a target class must also require a vote of any purchase class.

3. By adding § 270.18f–3 to read as follows:

§ 270.18f–3 Multiple class companies.

Notwithstanding sections 18(f)(1) and 18(i) of the Act (15 U.S.C. 80a–18(f)(1) and (i), respectively), a registered open-end management investment company or series or class thereof established in accordance with section 18(f)(2) of the Act (15 U.S.C. 80a–18(f)(2)) whose shares are registered on Form N–1A [§§ 239.15A and 274.11A of this chapter] (''company'') may issue more than one class of voting stock, *provided* that:

(a) Each class:

(1)(i) Shall have a different arrangement for shareholder services or the distribution of securities or both, and shall pay all of the expenses of that arrangement;

(ii) May pay a different share of other expenses, not including advisory or custodial fees or other expenses related to the management of the company's assets, if these expenses are actually incurred in a different amount by that class, or if the class receives services of a different kind or to a different degree than other classes; and

(iii) May pay a different advisory fee to the extent that any difference in amount paid is the result of the application of the same performance fee provisions in the advisory contract of the company to the different investment performance of each class;

(2) Shall have exclusive voting rights on any matter submitted to shareholders that relates solely to its arrangement;

(3) Shall have separate voting rights on any matter submitted to shareholders in which the interests of one class differ from the interests of any other class; and

(4) Shall have in all other respects the same rights and obligations as each other class.

(b) Expenses may be waived or reimbursed by the company's adviser, underwriter, or any other provider of services to the company.

(c) Income, realized and unrealized capital gains and losses, and expenses of the company not allocated to a particular class pursuant to paragraph (a) of this section:

(1) Except as permitted in paragraph (c)(2) of this section, shall be allocated to each class on the basis of the net asset value of that class in relation to the net asset value of the company; or

(2) For companies operating under § 270.2a–7 (including the provision allowing the calculation of net assets on an amortized cost basis), and for other companies declaring distributions of net investment income daily that maintain the same net asset value per share in each class, may be allocated:

(i) To each share without regard to class, *provided* that the company has received undertakings from its adviser, underwriter or any other provider of services to the company, agreeing to waive or reimburse the company for payments to such service provider by one or more classes, as allocated under paragraph (a)(1) of this section, to the extent necessary to assure that all classes of the company maintain the same net asset value per share; or

(ii) On the basis of relative net assets (settled shares). For purposes of this section, ''relative net assets (settled shares)'' are net assets valued in accordance with generally accepted accounting principles but excluding the value of subscriptions receivable, in relation to the net assets of the company.

(d) Any payments made under paragraph (a) of this section shall be made pursuant to a written plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or exchange privileges. Before the first issuance of a share of any class in reliance upon this section, and before any material amendment of a plan, a majority of the directors of the company, and a majority of the directors who are not interested persons of the company, shall find that the plan as proposed to be adopted or amended, including the expense allocation, is in

the best interests of each class individually and the company as a whole; initial board approval of a plan under this paragraph (d) is not required, however, if the plan does not make any change in the arrangements and expense allocations previously approved by the board under an existing order of exemption. Before any vote on the plan, the directors shall request and evaluate, and any agreement relating to a class arrangement shall require the parties thereto to furnish, such information as may be reasonably necessary to evaluate the plan.

(e) Nothing in this section prohibits a company from offering any class with:

(1) An exchange privilege providing that securities of the class may be exchanged for certain securities of another company; or

(2) A conversion feature providing that shares of one class of the company (the ''purchase class'') will be exchanged automatically for shares of another class of the company (the ''target class'') after a specified period of time, *provided that*:

(i) The conversion is effected on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee, or other charge;

(ii) The expenses, including payments authorized under a plan adopted pursuant to § 270.12b–1 (''rule 12b–1 plan''), for the target class are not higher than the expenses, including payments authorized under a rule 12b–1 plan, for the purchase class; and

(iii) If the amount of expenses, including payments authorized under a rule 12b–1 plan, for the target class is increased materially without approval of the shareholders of the purchase class, the fund will establish a new target class for the purchase class on the same terms as applied to the target class before that increase.

(3) A conversion feature providing that shares of a class in which an investor is no longer eligible to participate may be converted to shares of a class in which that investor is eligible to participate, *provided that*:

(i) The investor is given prior notice of the proposed conversion; and

(ii) The conversion is effected on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee, or other charge.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

4. The authority citation of Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

5. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

Note: Form N–1A does not, and the amendments to Form N–1A will not, appear in the Code of Federal Regulations.

6. By adding new General Instruction I to Form N–1A [referenced in §§ 239.15A and 274.11A] to read as follows:

Form N–1A

* * * * *

General Instructions

* * * * *

I. Multiple Class and Master-Feeder Funds

Registrants issuing multiple classes of shares that provide for conversions of exchanges of shares from one class to another class of the same fund should disclose the information required by Form N–1A about all other classes into which the shares may be converted or exchanged. This information should be presented in a format designed to facilitate comprehension by investors, and when appropriate, should use tables, side-by-side comparisons, or other presentations to assist an investor's understanding of the other class or classes. A ''multiple class fund'' is an open-end management investment company that issues more than one class of shares, each of which represents interests in the same portfolio of securities, and either meets the requirements of rule 18f–3 under the Act [17 CFR 270.18f–3] or operates pursuant to an exemptive order. A ''feeder fund'' is an open-end management investment company, except a company that issues periodic payment plan certificates, that holds shares of a single open-end management investment company (the ''master fund'') as its only investment securities.

7. By amending Form N–1A [referenced in §§ 239.15A and 274.11A] by adding Instruction 4A to Item 2(a)(i), to read as follows:

Form N–1A

* * * * *

Item 2. Synopsis

(a)(i) * * *

Instructions:

* * * * *

4A. If the prospectus offers shares of a feeder fund, reflect the expenses of both the feeder fund and the master fund in which the feeder fund invests in a single fee table using the captions provided. In the brief narrative following the fee table, state that the fee table reflects the expenses of both Registrants.

* * * * *

8. By amending Form N–1A [referenced in §§ 239.15A and 274.11A] by adding Item 6(h) to read as follows:

Form N–1A

* * * * *

Item 6. Capital Stock and Other Securities

* * * * *

(h) Registrants that offer multiple classes of shares or that are feeder funds should briefly describe the salient features of the multiple class or master-feeder structure. In the case of a feeder fund, explain the circumstances under which the feeder fund could no longer invest in the master fund (*e.g.*, if the master fund changed its investment objectives to be inconsistent with those of the feeder fund), and the consequences to shareholders of such an event. If the Registrant has publicly offered any class of shares of the same series not offered through the prospectus, or if any publicly offered feeder fund not offered through the prospectus invests in the same master fund as the Registrant, include the following disclosure: (i) that the Registrant issues other classes or that other funds invest in the same master fund (using the same terminology for classes or master and feeder funds as elsewhere in the prospectus), (ii) that those other classes or feeder funds may have different sales charges and other expenses, which may affect performance, (iii) a telephone number investors may call to obtain more information concerning the other classes or feeder funds available to them through their sales representative, and (iv) that investors may obtain information concerning those classes or feeder funds from (as applicable) their sales representative, or any person, such as the principal underwriter, a broker-dealer or bank, which is offering or making available to them the securities offered in the prospectus.

9. By amending Form N–1A [referenced in §§ 239.15A and 274.11A] by adding paragraph (b)(18) to Item 24 before the Instructions to read as follows:

Form N–1A

* * * * *

Item 24. Financial Statements and Exhibits

* * * * *

(b) * * *

(18) copies of any plan entered into by Registrant pursuant to Rule 18f–3 under the 1940 Act, any agreement with any person relating to the implementation of a plan, any amendment to a plan or agreement, and a copy of the portion of the minutes of a meeting of the Registrant's directors describing any action taken to revoke a plan.

* * * * *

10. By adding Guide 34 to the Guidelines for Form N–1A [referenced in §§ 239.15A and 274.11A] to read as follows:

Guidelines for Form N–1A

* * * * *

Guide 34. Multiple Class and Master-Feeder Structures

In response to Item 6, if a single prospectus is used to offer more than one class of a multiple class fund or more than one feeder fund that invests in the same master fund, the prospectus should provide a separate response to Item 2(a)(i) (the fee table requirement) for each class or feeder fund and should clearly explain the differences between the expense and/or sales load arrangements of the classes or feeder funds. The fee table information should be arranged to facilitate a comparison by shareholders of the different fee structures.

11. By amending Form N–14 [referenced in § 239.23] by revising Item 16(10) to read as follows:

Note: Form N–14 does not, and the amendment to Form N–14 will not, appear in the Code of Federal Regulations.

Form N–14

* * * * *

Item 16. Exhibits

* * * * *

(10) copies of any plan entered into by registrant pursuant to rule 12b–1 under the 1940 Act [17 CFR 270.12b–1] and any agreements with any person relating to implementation of the plan, and copies of any plan entered into by Registrant pursuant to Rule 18f–3 under the 1940 Act [17 CFR 270.18f–3], any agreement with any person relating to implementation of the plan, any amendment to the plan, and a copy of the portion of a meeting of the minutes of the Registrant's directors describing any action taken to revoke the plan;

* * * * *

Dated: February 23, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4997 Filed 3–1–95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–20916; File No. S7–24–88]

RIN 3235–AD18

Exemption for Certain Open-End Management Investment Companies To Impose Contingent Deferred Sales Loads

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a new rule under the Investment Company Act of 1940 to permit certain registered open-end management investment companies (''mutual funds'') to impose contingent deferred sales loads (''CDSLs''). A CDSL is a sales charge that is paid at redemption; its amount declines over several years until it reaches zero. The adoption of the rule is intended to allow mutual funds to offer investors the choice of an additional form of sales load without applying to the Commission for exemptive relief.

EFFECTIVE DATE: The new rule will become effective April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytblat, Staff Attorney, (202) 942–0693, or Robert G. Bagnall, Assistant Chief, (202) 942–0686, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–6, Washington, D.C. 20549.

Requests for formal interpretive advice should be directed to the Office of Chief Counsel at (202) 942–0659, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–6, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting rule 6c–10 [17 CFR 270.6c–10] under the Investment Company Act of 1940 [15 U.S.C. § 80a] (the ''Investment Company Act'' or the ''Act''). The Commission is not adopting the amendments that were proposed to Form N–1A [17 CFR 239.15A, 274.11A]. In a companion release, the Commission is proposing amendments to rule 6c–10 that would permit mutual funds to impose deferred sales loads generally, including loads payable in installments (''installment loads''); the amendments also would modify most of the substantive requirements of rule 6c–10 as adopted here.[1]

A condition in many CDSL exemptive orders granted to date requires applicants to comply with rule 6c–10 as originally proposed or as it may be reproposed, adopted, or amended. Rule 6c–10 as adopted here constitutes the rule as adopted within the meaning of that condition; the amendments that the Commission is proposing in the companion release do not constitute the rule as reproposed or amended within the meaning of that condition and may not be relied upon by those applicants.

I. Introduction and Background

The Commission proposed rule 6c–10 in 1988 to allow mutual funds to impose deferred sales loads generally, including CDSLs, as well as other loads paid at redemption and sales loads payable in installments.[2] The Commission received 33 comment letters.[3] Although the commenters generally supported the proposal to allow CDSLs, some commenters questioned the need for certain substantive requirements in the rule. Commenters had mixed reactions to the proposed provisions for installment loads.

Since the proposal of rule 6c–10, the Commission (or the Division of Investment Management exercising delegated authority) has issued almost 200 exemptive orders permitting funds to impose CDSLs and continues to receive such applications. Also since the original proposal, the National Association of Securities Dealers, Inc. (''NASD'') has amended the provisions of its Rules of Fair Practice that govern mutual fund sales charges (''NASD Sales Charge Rule''). The amendments address certain deferred sales charges, including CDSLs, and distribution charges paid by funds in accordance with rule 12b–1 under the Investment Company Act.[4]

The Commission has considered the comments on the proposal and the implications of the amendments to the NASD Sales Charge Rule and has concluded that it may be appropriate to modify the rule to eliminate most of the substantive requirements in the original proposal and rely upon the roles of disclosure and the overall limits in the NASD Sales Charge Rule. Instead of adopting rule 6c–10 with these changes, the Commission is proposing modifications to rule 6c–10 to obtain the benefit of public comment on this approach and on issues raised by deferred loads other than CDSLs.

In light of the Commission's extensive experience under the CDSL exemptive

[1] Exemption for Certain Open-End Management Investment Companies to Impose Deferred Sales Loads, Investment Company Act Release No. 20917 (Feb. 23, 1995).

[2] Exemptions for Certain Registered Open-End Management Investment Companies To Impose Deferred Sales Loads, Investment Company Act Release No. 16619 (Nov. 2, 1988), 53 FR 45275 [hereinafter Proposing Release].

[3] The commenters included the American Bar Association Subcommittee on Investment Companies and Investment Advisers (the ''ABA Subcommittee''); the American Council of Life Insurance; Deutsche Bank AG New York Branch (''Deutsche Bank'') (commenting outside the comment period); Fidelity Management and Research Company; Gaston & Snow; IDS Financial Services, Inc. (''IDS Financial''); IDS Mutual Fund Group; the Investment Company Institute (the ''ICI'') (commenting both within and outside the comment period); the Keystone Group, Inc.; the National Association of Securities Dealers, Inc.; NASL Financial Services, Inc. (commenting outside the comment period); NYLIFE Securities, Inc.; Simpson, Thacher & Bartlett (''Simpson Thacher'') (commenting outside the comment period); Templeton Funds Management, Inc.; and 19 individual investors. The comment letters are available for public inspection and copying at the Commission's public reference room in File No. S7–24–88.

[4] 17 CFR 270.12b-1.

orders, the Commission does not believe that it is necessary to require funds seeking to impose CDSLs to continue to file exemptive applications with the Commission pending consideration of these proposed modifications. Therefore, the Commission is adopting rule 6c–10 to permit the imposition of CDSLs, but not other forms of deferred sales load.[5]

II. Discussion

The Commission is adopting rule 6c–10 substantially as originally proposed to permit mutual funds[6] to impose CDSLs. The rule as adopted and as originally proposed requires CDSLs to be calculated based on the lesser of the net asset value at the time of purchase or at the time of redemption; specifies a particular order of load calculation in a partial redemption; prohibits CDSLs on reinvested dividends and capital gains distributions; and allows scheduled CDSL variations. The rule as adopted does depart from the proposal in certain respects in light of comments on the 1988 proposal and of the adoption of amendments to the NASD Sales Charge Rule.

A. The NASD Rule on Maximum Sales Charges

Paragraph (a)(2) in the proposed rule provided that the maximum amount of a back-end load, or any combination of a back-end load and a front-end load, may not exceed the maximum allowed under the NASD Sales Charge Rule. At the time rule 6c–10 was proposed, the NASD Sales Charge Rule did not expressly apply to back-end loads. Since then, the NASD has amended its Sales Charge Rule to include expressly back-end loads, as well as asset-based distribution fees.[7] Because a Commission rule no longer is necessary to bring CDSLs within the limits of the NASD Sales Charge Rule, the proposed paragraph has been deleted from rule 6c–10 as adopted to permit CDSLs.

B. ''No-Load'' Labeling

As initially proposed, rule 6c–10 would have prohibited any exempted person and its first and second tier affiliates (all as set forth in the proposed rule), from holding a mutual fund out to the public as being ''no-load'' or as having ''no sales charge'' if the fund imposed a deferred sales load. The amendments to the NASD Sales Charge Rule also expressly prohibited NASD members and their associated persons from describing a mutual fund as ''no load'' or as having ''no sales charge'' if the fund imposes a front-end load, a back-end load, or a 12b–1 and/or service fee that exceeds .25% of average net assets per year.[8] Therefore, the rule as adopted to permit CDSLs omits the prohibition in proposed paragraph (b) as duplicative of the provision in the NASD Sales Charge Rule. The Commission also believes that it would be misleading and a violation of the federal securities laws for a fund that imposes a deferred sales load to be held out as a no-load fund.[9]

C. Interest, Carrying, and Finance Charges

As proposed in 1988, rule 6c–10 would have prohibited a fund from imposing a deferred load if any amount were charged on the shareholders or the fund that was intended to be a payment of interest related to the load or a similar charge. Several commenters pointed out that a prohibition on interest charges would leave a fund's underwriter uncompensated for the cost of advancing the sales and promotional expenses later reimbursed through deferred loads.[10] Commenters noted that the NASD Sales Charge Rule allows the inclusion of an interest component in the computation of the aggregate sales load limits.[11]

The proposed provision was not intended to prohibit any interest charges that might be reflected in the specified load amount. Rather, the provision was designed to prohibit any interest or similar charge that was separate from and in addition to the load amount. Because paragraph (a)(1) of the rule already requires all components of a deferred load to be included in one specified amount, rule 6c–10 as adopted does not include the interest charge prohibition.[12]

D. Scheduled Variations

Paragraph (a)(4) of the rule as adopted permits a fund to offer a scheduled variation in, or eliminate, a CDSL for a particular class of shareholders or transactions, provided that the scheduled variation meets the conditions in rule 22d–1 under the Act.[13] Paragraph (a)(4) also permits a fund to offer an existing shareholder any new scheduled variation that would

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[5] *See supra* note 1.

[6] Like the rule as proposed, rule 6c–10 as adopted applies only to open-end management investment companies other than registered separate accounts. In the Proposing Release, the Commission also requested comment on whether to propose amendments to rules 6c–8 [17 CFR 270.6c–8] and 6e–3(T) [17 CFR 270.6e–3(T)] under the Act, and whether to issue revised proposed amendments to rule 6e–2 [17 CFR 270.6e–2] under the Act, governing the use of deferred sales loads by registered insurance company separate accounts. The Commission received eight comment letters in response to that request, suggesting that the Commission not propose any amendments. The Commission is not taking any action with regard to these rules.

[7] The NASD Sales Charge Rule prohibits NASD members from offering or selling shares of an open-end management investment company registered under the Act if the sales charges described in the company's prospectus are excessive. Aggregate sales charges are deemed excessive under the Rule if they do not conform to the specific provisions set forth in the Rule. NASD, Rules of Fair Practice, Art. III, Secs. 26(d)(1) and (2). *See also* Letter from the NASD to Jonathan G. Katz, Secretary, SEC (March 14, 1989), File No. S7–24–88; Proposed Rule Change by NASD Relating to the Limitation of Asset-Based Sales Charges as Imposed by Investment Companies, Securities Exchange Act Release No. 29070 (Apr. 12, 1991), 56 FR 16137; Order Approving Proposed Rule Change Relating to the Limitation of Asset-Based Sales Charges as Imposed by Investment Companies, Securities Exchange Act Release No. 30897 (July 7, 1992), 57 FR 30985.

Since back-end loads are used by mutual funds to finance the payment of brokerage commissions, and brokers selling mutual fund shares must be members of the NASD, virtually all funds that impose these loads would be distributed by NASD members and therefore would be subject to the Sales Charge Rule.

[8] NASD, Rules of Fair Practice, Art. III, Sec. 26(d)(3).

[9] *See* Proposing Release, *supra* note 2, at 45283 (referring, in turn, to an earlier Commission statement of its view).

[10] Letter from the ABA to Jonathan G. Katz, Secretary, SEC at 7–8 (Jan. 31, 1989); Letter from Deutsche Bank, submitted on its behalf by Simpson Thacher, to the Division of Investment Management, SEC 8–9 (Nov. 5, 1993); Letter from the ICI to Barry Barbash, Director, Division of Investment Management, SEC 3–4 (June 14, 1994); Letter from the ICI to Jonathan G. Katz, Secretary, SEC 7–8 (Jan. 9, 1989); Letter from IDS Financial to Jonathan G. Katz, Secretary, SEC 1–2 (Jan. 3, 1989).

[11] ICI June 14 comment letter, *supra* note 10, at 3–4; Deutsche Bank November 5, 1993 comment letter, *supra* note 10, at 9.

[12] The initial proposal stated that in the view of the Commission's Division of Market Regulation, deferred sales loads likely would not involve an extension of credit from a fund's underwriter to the shareholders that would be prohibited under section 11(d)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act''). One commenter nevertheless raised a concern that section 11(d)(1) of the Exchange Act would prohibit deferred sales charges. Deutsche Bank November 5, 1993 comment letter, *supra* note 10, at 9–10. The Commission believes that absent an explicit interest charge, a deferred sales load would not involve an extension of credit prohibited by section 11(d)(1) of the Exchange Act. The Commission notes that the NASD Sales Charge Rule limits the amount that NASD members can charge their customers for the purchase of mutual fund shares.

[13] 17 CFR 270.22d–1. Under rule 22d–1, any scheduled variation must be applied uniformly to all offerees in the specified class; adequate information about the scheduled variation must be furnished to the existing and prospective shareholders; the fund's prospectus and statement of additional information must be revised to describe the new scheduled variation prior to making the variation available to investors; and existing shareholders must be advised of the new scheduled variation within one year of the date the variation is first made available to investors.

waive or reduce the amount of a CDSL not yet paid.

E. Other Changes

The text of the rule as adopted also departs from the originally proposed text in two other respects. First, because the adoption of the rule is limited to CDSLs, the adopted rule text omits provisions relating to installment loads or other forms of back-end loads.[14] Second, paragraph (a) of the rule as adopted omits an exemption from section 22(c) of the Investment Company Act [15 U.S.C. § 80a–22(c)], because section 22(c) is solely a grant of rulemaking authority to the Commission and no exemption from that section is required.

F. Form N–1A

The Commission is not adopting the amendments to Form N–1A that were proposed in 1988. Because the Commission is not adopting the provisions of rule 6c–10 for installment loads, no adjustments to the fee table are necessary now.

III. Cost/Benefit Analysis

Rule 6c–10 as adopted does not impose any significant burdens on mutual funds. Rather, the rule should benefit the funds by making it possible to impose CDSLs without having to file exemptive applications with the Commission. The adoption of the rule would give investors an additional option for a means of paying sales charges.

IV. Summary of Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in Investment Company Act Release No. 16619. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604. The Analysis explains that the new rule allows mutual funds to impose CDSLs without having to file exemptive applications with the Commission. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Nadya B. Roytblat, Esq., Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

V. Statutory Authority

The Commission is adopting rule 6c–10 under sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), and –37(a)].

List of Subjects in 17 CFR Part 270

Investment Companies, Reporting and recordkeeping requirements, Securities.

Text of Adopted Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 is amended by adding the following citation:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

Section 270.6c–10 is also issued under sec. 6(c) [15 U.S.C. 80a–6(c)];

* * * * *

2. Section 270.6c–10 is added to read as follows:

§ 270.6c–10 Exemption for certain open-end management investment companies to impose contingent deferred sales loads.

(a) A company and any exempted person shall be exempt from the provisions of Sections 2(a)(32), 2(a)(35), and 22(d) of the Act [15 U.S.C. 80a–2(a)(32), 80a–2(a)(35), and 80a–22(d), respectively] and § 270.22c–1 to the extent necessary to permit a contingent deferred sales load to be imposed on shares issued by the company, *Provided*, that:

(1) The amount of a contingent deferred sales load is calculated as being the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the same or a lower percentage of the net asset value of the shares at the time of redemption;

(2) No contingent deferred sales load is imposed on shares, or amounts representing shares, that are purchased through the reinvestment of dividends or capital gains distributions;

(3) The contingent deferred sales load is calculated as if shares or amounts representing shares not subject to a load are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased, *Provided*, however, that another order of redemption may be used if such order would result in the redeeming shareholder paying a lower contingent deferred sales load; and

(4) The same contingent deferred sales load is imposed on all shareholders, except that scheduled variations in or elimination of a contingent deferred sales load may be offered to particular classes of shareholders or in connection with particular classes of transactions, *Provided*, that the conditions in § 270.22d–1 are satisfied. Nothing in this paragraph (a) shall prevent a company from offering to existing shareholders a new scheduled variation that would waive or reduce the amount of a contingent deferred sales load that has not yet been paid.

(b) For purposes of this section:

(1) *Company* means a registered open-end management investment company, other than a registered separate account, and includes a separate series of such company;

(2) *Exempted person* means any principal underwriter of, dealer in, and any other person authorized to consummate transactions in, securities issued by such company; and

(3) *Contingent deferred sales load* means any amount properly chargeable to sales or promotional expenses that is paid by a shareholder, if at all, at the time of redemption, the amount of which would decrease to zero if the shares were held for a reasonable period of time specified by the company.

Dated: February 23, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4996 Filed 3–1–95; 8:45 am]

BILLING CODE 8010–01–P

[14] *E.g.*, paragraph (a)(1)(ii) and pertinent provisions of other paragraphs such as paragraph (c)(3) in the original proposal.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, and 274

[Release Nos. 33–7144; IC–20917; File No. S7–8–95]

RIN 3235–AD18

Exemption for Certain Open-End Management Investment Companies To Impose Deferred Sales Loads

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form amendments, and request for comment.

SUMMARY: The Commission is proposing amendments to the rule under the Investment Company Act of 1940 that permits certain registered open-end management investment companies (''mutual funds'') to impose contingent deferred sales loads. The proposed amendments would allow funds to offer investors a wider variety of deferred sales loads, including installment loads, and would eliminate certain requirements in the rule. The Commission also is proposing amendments to the registration form for mutual funds, and publishing for comment a staff guide to the registration form. These amendments modify the requirements for disclosing deferred sales loads in mutual fund prospectuses to reflect the changes made in the proposed rule amendments.

DATES: Comments must be received on or before April 17, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549. All comment letters should refer to File No. S7–8–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytblat, Staff Attorney, (202) 942–0693, or Robert G. Bagnall, Assistant Chief, (202) 942–0686, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 10–6, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed amendments to rule 6c–10 (17 CFR 270.6c–10) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act'' or the ''Act''), and on proposed amendments to Form N–1A (17 CFR 239.15A, 274.11A) under the Securities Act of 1933 (15 U.S.C. 77a–77aa) (the ''Securities Act'') and the Investment Company Act.[1]

Executive Summary

The Commission is proposing amendments to rule 6c–10 (17 CFR 270.6c–10) under the Investment Company Act to allow mutual funds to impose deferred sales loads other than contingent deferred sales loads (''CDSLs''), and to remove certain requirements in the rule. Rule 6c–10, which allows mutual funds to impose CDSLs, was adopted today in a companion release.[2] The proposed amendments would allow mutual funds to assess sales charges such as those paid at redemption (''back-end loads'') that differ from CDSLs, as well as loads paid after purchase during the term of a shareholder's investment in a fund, for example, in installments (''installment loads''). These new forms of deferred sales load would be an alternative to the existing sales load structures. Although mutual funds to date have not used installment loads or back-end loads other than CDSLs, the Commission has permitted back-end loads under the rules for certain variable insurance products, and has issued installment load exemptive orders to separate accounts and unit investment trusts.

Rule 6c–10 provisions for back-end loads other than CDSLs and installment loads were part of proposed rule 6c–10 as originally proposed in 1988.[3] That proposal would have codified for deferred sales loads generally the exemptions and the requirements in the CDSL exemptive orders granted to date. Rule 6c–10 was adopted today to allow CDSLs essentially as proposed. Some commenters on the original proposal suggested that, because mutual fund sales charges are regulated by the National Association of Securities Dealers, Inc. (the ''NASD''), it is unnecessary for the Commission to impose specific requirements on deferred loads, other than requirements governing prospectus disclosure. The Commission is proposing amendments to rule 6c–10 to follow such an approach for CDSLs and other deferred loads by removing most of the requirements in rule 6c–10. Under the new approach, the terms of any deferred sales load would be subject to specific disclosure requirements and would be covered by the overall limits in the NASD rule governing the amount of mutual fund sales charges (''NASD Sales Charge Rule''). The Commission also is proposing revised prospectus disclosure requirements that reflect the proposed changes to rule 6c–10.

I. Background

The Commission first proposed rule 6c–10 allowing mutual funds to impose deferred sales loads on November 2, 1988.[4] Under the 1988 proposal, mutual funds would have been able to assess deferred loads under the terms and conditions contained in CDSL exemptive orders granted to individual funds as of the date of the proposal. The proposed rule would have permitted mutual funds to charge not only CDSLs,[5] but also loads paid at redemption whose amount remains the same or changes in a manner different than a CDSL, as well as loads paid in one or more installments during the term of a shareholder's investment in a fund. In accordance with the CDSL exemptive orders, the rule as proposed in 1988 would have specified load calculation requirements; prohibited deferred loads on reinvested distributions; and allowed scheduled load variations. Rule 6c–10 as adopted today to allow CDSLs contains these requirements.

The Commission received 33 comment letters on the 1988 proposal.[6]

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[1] Exemption for Certain Open-End Management Investment Companies to Impose Contingent Deferred Sales Loads, Investment Company Act Release No. 20916 (Feb. 23, 1995) [hereinafter Rule 6c–10 Adopting Release].

[2] *Supra* note 1.

[3] Exemptions for Certain Registered Open-End Management Investment Companies To Impose Deferred Sales Loads, Investment Company Act Release No. 16619 (Nov. 2, 1988), 53 FR 45275 [hereinafter 1988 Proposing Release].

[4] 1988 Proposing Release, *supra* note 3.

[5] A CDSL is paid at redemption, but declines to zero if the shares are held for a certain period of time. Mutual funds typically impose a CDSL in combination with an asset-based distribution fee charged in accordance with rule 12b–1 under the Act [17 CFR 270.12b–1] (''rule 12b–1 fee''), in an arrangement commonly called a ''spread load.'' Under this arrangement, a fund's principal underwriter initially pays the fund's sales and promotional expenses, including commissions to persons who sell the fund's shares. The underwriter then recovers these expenses through a distribution fee paid to it by the fund out of the fund's assets. Should a shareholder redeem his or her shares before the underwriter has been fully reimbursed, the CDSL paid by the shareholder upon redemption compensates the underwriter for the balance.

[6] The commenters included the American Bar Association Subcommittee on Investment Companies and Investment Advisers (the ''ABA Subcommittee''); the American Council of Life Insurance; Deutsche Bank AG New York Branch (''Deutsche Bank'') (commenting outside the comment period); Fidelity Management and Research Company; Gaston & Snow; IDS Financial Services, Inc. (''IDS Financial''); IDS Mutual Fund Group; the Investment Company Institute (the ''ICI'') (commenting both within and outside the comment period); the Keystone Group, Inc. (''Keystone''); the National Association of Securities Dealers, Inc.; NASL Financial Services, Inc. (commenting outside the comment period); NYLIFE

The commenters generally supported the proposal.[7] The commenters welcomed a rule allowing CDSLs as eliminating the need to file exemptive applications, and many maintained that installment loads could offer desirable flexibility to funds as well as consumers.[8] Individual investors in particular supported installment loads as an option in paying a sales charge.[9] Some of these investors compared installment loads to front-end loads and preferred the former as allowing them to defer the payment of a sales charge; others compared installment loads to rule 12b–1 fees, and believed that installment loads as proposed in 1988 would be a more clear charge, as well as one that would be payable within a more definite term. Other commenters have suggested that installment loads would make it easier for smaller mutual fund sponsors, as well as sponsors of mutual funds not affiliated with brokerage firms, to obtain financing to pay broker commissions through securitization of installment load cash flows; and they argued that installment loads would thereby encourage competition in the fund industry that ultimately would benefit investors.[10]

II. Discussion of Proposed Amendments to Rule 6c–10

Like the 1988 proposal, the proposed amendments to rule 6c–10 would allow mutual funds to impose back-end sales loads other than CDSLs as well as installment loads, and would permit scheduled load variations. In a change from the 1988 proposal and the rule as adopted, the proposed amendments no longer would specify load calculation requirements, nor prohibit deferred sales loads on reinvested dividends and other distributions. Instead, the terms of any deferred sales load would be required to be covered by the overall limits in the NASD Sales Charge Rule,[11] and would be subject to specific prospectus disclosure requirements under the proposed amendments to the Commission's mutual fund registration form.

A. Scope of the Rule as Amended

Under the proposed amendments, paragraph (b)(3) of the rule would define a deferred sales load as any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption.[12] The definition would include CDSLs, as well as other loads paid at redemption whose amount may remain the same or change in a manner different than a CDSL. The definition also would include loads paid after purchase during the term of a shareholder's investment in a fund, such as in one or more installments that could be accelerated upon an early redemption.

Rule 6c–10 as adopted and as originally proposed does not apply to registered insurance company separate accounts. The exemption to impose deferred sales loads under the proposed amendments also would not extend to unit investment trusts. The Commission has issued installment load exemptive orders to unit investment trusts (''UITs''),[13] and requests comment on the appropriateness of a rule allowing UITs to assess deferred loads.[14]

Unlike the 1988 proposal, which would have required installment loads to be deducted directly from a shareholder's account, the amendments would not require any particular method of collecting installment loads. The loads, for example, could be paid out of distributions, by automatic redemptions, or through separate billing of an investor's account. Two commenters indicated that funds most likely would deduct installment load payments from dividend distributions.[15] The Commission invites further comment on the methods that could be used to pay installment loads. Whichever method is used, however, it would have to be disclosed in the fund's prospectus, as required by the proposed

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Securities, Inc. (''NYLIFE''); Simpson, Thacher & Bartlett (''Simpson Thacher'') (commenting outside the comment period); Templeton Funds Management, Inc. (''Templeton''); and 19 individual investors. The comment letters are available for public inspection and copying at the Commission's public reference room in File No. S7–24–88.

[7] The comments addressed CDSLs and installment loads, but did not focus specifically on back-end loads other than CDSLs. While some earlier industry commenters perceived practical difficulties with using installment loads, more recent industry comments suggest that any such difficulties either no longer exist or could be resolved. Compare Letter from the ABA Subcommittee to Jonathan G. Katz, Secretary, SEC (Jan. 11, 1989); Letter from IDS Financial to Jonathan G. Katz, Secretary, SEC (Jan. 3, 1989); Letter from the ICI to Jonathan G. Katz, Secretary, SEC (Jan. 9, 1989); Letter from Keystone to Jonathan G. Katz, Secretary, SEC (Jan. 6, 1989) (together, suggesting recordkeeping, transfer agent, accounting and tax-related complexities associated with installment loads) *to* Letter from Deutsche Bank, submitted on its behalf by Simpson Thacher, to the Division of Investment Management, SEC 2 (Dec. 13, 1993) (stating that Deutsche Bank ''encountered a great deal of interest'' in installment loads in the course of its ''discussions with more than 15 well-recognized (both small and large) mutual fund management companies'').

Two earlier commenters also interpreted a statement in the 1988 Proposing Release that the proposal of rule 6c–10 should be read together with the Commission's proposed amendments to rule 12b–1, as intending to mandate installment loads as a replacement for spread loads. ABA Subcommittee comment letter, *supra* note 7, at 3; ICI comment letter, *supra* note 7, at 2, 13–16. *See also* Payment of Asset-Based Sales Loads by Registered Open-End Management Investment Companies, Investment Company Act Release No. 16431 (June 13, 1988), 53 FR 23258. The 1988 proposal was not intended to express such a view, nor is the Commission today expressing such a view.

[8] Letter from IDS Mutual to Jonathan G. Katz, Secretary, SEC (Nov. 15, 1988); Letter from NYLIFE to Jonathan G. Katz, Secretary, SEC (Dec. 30, 1988); Letter from Templeton to Jonathan G. Katz, Secretary, SEC (Jan. 9, 1989); Deutsche Bank December 13, 1993 comment letter, *supra* note 7; Letter from the NASL to the Division of Investment Management, SEC (Feb. 16, 1994).

[9] All but one of the 16 letters the Commission received from individual investors on this subject favored the installment load proposal.

[10] Deutsche Bank December 13, 1993 comment letter, *supra* note 7; NASL comment letter, *supra* note 8. Both commenters compared the financing possibilities with installment loads to the financing of receivables from rule 12b–1 fees. The commenters noted that the risk of a fund board's terminating a rule 12b–1 plan, as well as the risk of net asset value fluctuations inherent in an asset-based charge, currently restrict the availability of credit to larger mutual fund sponsors only; and that installment loads, which would not carry the same risks, could broaden the financing possibilities. *See also* Letter from the ICI to Barry Barbash, Director, Division of Investment Management, SEC 5 (June 14, 1994) (noting that facilitation of the financing of distribution costs is one of the principal objectives cited by the proponents of installment loads).

One commenter's remarks suggested that, from the point of view of those concerned with systemic risk, the assurance of a steady stream of payments in an installment load structure would mean that a fund sponsor would be taking on less risk when it borrows to finance commission payments. Deutsche Bank December 13, 1993 comment letter, *supra* note 7, at 4–5.

[11] The NASD Sales Charge Rule prohibits NASD members from offering or selling shares of an open-end management investment company registered under the Investment Company Act if the sales charges described in the company's prospectus are excessive. Aggregate sales charges are deemed excessive under the Rule if they do not conform to the specific provisions set forth in the Rule. NASD, Rules of Fair Practice, Art. III, Secs. 26(d) (1) and (2).

[12] Rule 6c-10 as amended would not be applicable to certain charges that may be imposed by a mutual fund to discourage short-term trading in its shares and that are paid directly to the fund. *See, e.g.,* 17 CFR 270.11a–3(a)(7) (defining a ''redemption fee''). The Commission's staff has taken the position that such charges may be imposed without the need for exemptive relief under the Act. *See, e.g.,* John P. Reilly & Associates (pub. avail. July 12, 1979).

[13] *See* Merrill Lynch, Pierce, Fenner & Smith, Inc., Investment Company Act Release Nos. 13801 (Feb. 29, 1984), 49 FR 8512 (Notice of Application to allow UITs to impose a deferred sales load payable in installments) and 13848 (Mar. 27, 1984), 30 SEC Docket 192 (Order), and 15120 (May 29, 1986), 51 FR 20389 (Notice of Application) and 15167 (June 24, 1986), 35 SEC Docket 1735 (Order). *See also* PaineWebber, Inc., Investment Company Act Release Nos. 20755 (Dec. 6, 1994), 59 FR 64003 (Notice of Application to allow a UIT to impose a deferred sales load payable in installments) and 20819 (Jan. 4, 1995) (Order).

[14] *See* Rule 6c–10 Adopting Release, *supra* note 1, at n.7 regarding deferred sales loads in the context of separate accounts.

[15] ICI comment letter, *supra* note 7, at 8; Letter from Simpson Thacher to the Division of Investment Management, SEC 2 (Dec. 13, 1993).

amendments to Form N–1A.[16] Because different methods of collecting load payments could carry different potential tax consequences for investors,[17] funds also would be required to disclose those consequences briefly in the prospectus.[18]

B. Deferred Load Calculation

Rule 6c–10 sets two requirements for calculating a deferred sales load. Under the first requirement, a CDSL must be based on the lesser of the net asset value (the ''NAV'') at the time of purchase or the NAV at the time of redemption.[19] The 1988 proposal would have required the ''lesser of'' standard for all deferred loads paid at redemption, but would have allowed deferred loads paid other than at redemption (such as installment payments) to be based at a fund's option either on the NAV at the time of purchase or on the lesser of the NAV at the time of purchase or the NAV at the time the load was paid. The mandatory ''lesser of'' standard for loads paid at redemption was designed to eliminate any impediment to redemption in a falling market that might be created by the load. The second requirement prescribes the method for load calculation in a partial redemption.[20] This requirement was intended to allow shareholders the maximum benefit from shares in their deferred load accounts that carried no load.

Commenters on the 1988 proposal generally argued that neither requirement is necessary as long as deferred loads are subject to the limits of the NASD Sales Charge Rule and properly disclosed.[21] None of the commenters addressed the concern about an impediment to redemption associated with the ''lesser of'' requirement, nor any benefits or drawbacks of the order of load calculation. Some commenters suggested, however, that allowing, but not requiring, the ''lesser of'' method would make it easier for fund sponsors to obtain financing to pay commissions to brokers by eliminating the risk of NAV fluctuation.[22] One commenter also argued that eliminating the ''lesser of'' requirement would eliminate the need to build a cushion into the load structure to account for the risk of a lower NAV.[23] This commenter suggested that the ''lesser of'' standard may cause fund sponsors to set the load at a higher percentage amount than they otherwise would in order to allow a margin for a possible decline in the NAV.

The Commission is proposing to eliminate the two load calculation requirements from rule 6c-10. Under the proposed amendments, paragraph (a)(1) would allow a deferred load to be a specified percentage of the NAV at the time of purchase, redemption, or the payment of an installment, but would not otherwise limit load calculation.[24] Paragraph (a)(2) would require the terms of a deferred load to be subject to the NASD Sales Charge Rule.

The Commission requests comment on whether paragraph (a)(1) should provide for a deferred load to be based on the offering price either instead of, or in addition to, the NAV at the time of purchase. The fee table appearing in mutual fund prospectuses calls for deferred loads to be expressed, where applicable, as a percentage of the original purchase price. This disclosure provides easier comparability with front-end sales loads, which are expressed as a percentage of the offering price.

The requirement in paragraph (a)(1) that the load be a ''specified percentage'' stated in the prospectus would allow investors to know at the time of purchase the maximum percentage amount of the load.[25] Under the revised prospectus disclosure requirements, funds also would have to disclose in the fee table, and explain elsewhere in the prospectus, the manner in which the load is calculated.[26] In addition, funds would have to disclose the method by which they would calculate a deferred load in a partial redemption. The requirement in paragraph (a)(2) that the terms of a deferred load be covered by the NASD Sales Charge Rule would subject all deferred sales loads to the NASD's limits on maximum sales charges.[27] Such an approach is consistent with that currently taken with front-end sales charges assessed on mutual fund shares. The Commission requests comment on the proposed elimination of the load calculation restrictions and the reliance on revised prospectus disclosure requirements and the NASD Sales Charge Rule for deferred sales charges.

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[16] *See infra* section III.B.

[17] One commenter on the 1988 proposal, for example, pointed out that paying installments out of dividend distributions would mean that a shareholder would incur dividend income, yet not actually receive the portion of that income that was used to pay the installment. ICI comment letter, *supra* note 7, at 2, 9. Payment through automatic redemptions, on the other hand, would mean that a shareholder might incur a capital gain or loss on each such redemption; if additional shares then were purchased by the shareholder within 30 days of the automatic redemption, any capital loss might be disallowed under the ''wash sale'' rule contained in the Internal Revenue Code. *Id.* at 9; IDS Financial comment letter, *supra* note 7, at 1; NYLIFE comment letter, *supra* note 8, at 3.

According to another commenter, installment loads could present potential difficulties for tax-privileged investors, such as retirement plans subject to the Employee Retirement Income Security Act of 1974, as amended (''ERISA''). Simpson Thacher comment letter, *supra* note 15, at 1–8. Automatic redemptions to pay installment loads, for example, might result in the mutual fund's being deemed a fiduciary of the investor for purposes of ERISA, the redemption's being deemed a prohibited transaction under ERISA, and the investor's losing its tax-exempt status. *Id.* This commenter noted, however, that a fund could seek to obtain a favorable ruling from the Internal Revenue Service on these issues. Simpson Thacher comment letter, *supra* note 15, at 5–6. A fund also could choose not to offer installment loads to its tax-privileged investors.

[18] *See infra* section III.B (discussing staff Guide 30 to Form N–1A).

[19] 17 CFR 270.6c–10(a)(1).

[20] 17 CFR 270.6c–10(a)(3). A fund must treat as if redeemed first shares or amounts representing shares not subject to a load, and treat other shares or amounts representing shares as if redeemed in the order they were purchased. In a partial redemption, this method would allow a shareholder, in effect, to delay the payment of the deferred sales charge. In a full redemption, no particular order of load calculation would have affected the amount of a deferred sales charge due.

[21] ABA Subcommittee comment letter, *supra* note 7, at 6; ICI comment letter, *supra* note 7, at 2; IDS comment letter, *supra* note 7, at 2.

[22] Deutsche Bank December 13, 1993 comment letter, *supra* note 7, at 5; ICI June 14, 1994 comment letter, *supra* note 10, at 5.

[23] Deutsche Bank December 13, 1993 comment letter, *supra* note 7, at 5.

[24] This provision also would allow funds to base a deferred sales load on a combination of these standards, such as on the lesser of, or the higher of, the NAV at the time of purchase or redemption, provided the standard is disclosed and is consistent with any applicable provisions in the NASD Sales Charge Rule. A ''higher of'' standard, for instance, currently is not allowed under the NASD Sales Charge Rule for mutual funds without an asset-based sales charge, because the Rule limits the sales loads for these funds to a set percentage of the offering price. NASD, Rules of Fair Practice, Art. III, Sec. 26(d)(1)(A).

[25] The requirement that the load be a ''specified percentage'' does not mean that the amount must be fixed and may not decrease or increase over time. Rather, it requires only that the percentage amount of the load to be charged at a given time be disclosed in the prospectus. Therefore, the phrase ''the same or a lower percentage'' in paragraph (a)(1) as adopted for CDSLs has been deleted from the proposed text. Funds would be able to show in the prospectus fee table the range of any deferred load that changes over time, as well as a schedule of any installment load payments. *See infra* section III.A.

[26] *See infra* sections III.A and B.

[27] The NASD Sales Charge Rule in its current form governs only deferred loads paid at redemption. The Rule applies to, among other things, ''deferred sales charges,'' which it defines, in relevant part, as ''a sales charge that is deducted from the proceeds of the redemption of shares by an investor.'' NASD, Rules of Fair Practice, Art. III, Sec. 26(b)(8)(B). To the extent deferred loads would be allowed to be paid other than upon redemption *(e.g.*, installment loads), they would fall outside the current definition and would not be covered by the Rule. The proposed amendments to rule 6c-10 contemplate the NASD's amending its Sales Charge Rule to address deferred loads paid other than upon redemption. The Commission's staff has requested the NASD to review its Sales Charge Rule in light of the proposed amendments.

C. Deferred Loads on Reinvested Distributions

Rule 6c-10 prohibits mutual funds from imposing CDSLs on shares purchased through the reinvestment of dividends or other distributions.[28] Some commenters on the 1988 proposal argued that this prohibition is unnecessary so long as a mutual fund appropriately discloses the manner in which loads are assessed and so long as loads charged by mutual funds generally are subject to the limits in the NASD Sales Charge Rule.[29] The Commission is proposing to delete this prohibition from rule 6c-10. Under the revised prospectus disclosure requirements, funds that impose deferred sales charges on reinvested dividends and other distributions would have to disclose this fact in their prospectuses.[30] This approach would be consistent with the Commission's approach to front-end loads on reinvested dividends. The Commission requests comment on the appropriateness of the proposed approach for deferred loads.

The NASD Sales Charge Rule currently covers front-end loads, but not deferred loads, on reinvested dividends. The NASD Sales Charge Rule also does not cover loads on reinvested capital gains distributions or returns of capital.[31] The proposed amendments to rule 6c–10 contemplate the NASD's amending its Sales Charge Rule to address these issues.

D. ''No-Load'' Labeling

As proposed in 1988, rule 6c–10 would have prohibited any exempted person and its first and second tier affiliates (all as set forth in the proposed rule) from holding a mutual fund out to the public as being ''no-load'' or as having ''no sales charge'' if the fund imposed a deferred load. After rule 6c–10 was proposed, the NASD amended its Sales Charge Rule expressly to prohibit NASD members and their associated persons from describing a mutual fund as ''no load'' or as having ''no sales charge'' if the fund imposes a front-end load, a back-end load, or a 12b–1 and/or service fee that exceeds .25% of average net assets per year.[32] In light of this amendment to the NASD Sales Charge Rule, the Commission concluded that it was unnecessary to retain a separate no-load labeling prohibition for CDSLs in rule 6c–10 as adopted. The prohibition similarly is unnecessary for back-end loads other than CDSLs. Although the NASD Sales Charge Rule currently does not address installment loads, the Commission anticipates that the NASD would amend its Sales Charge Rule if the proposed rule 6c–10 amendments are adopted, and believes that it is unnecessary to amend rule 6c–10 to prohibit no-load labeling in the case of installment loads. The Commission also believes that it would be misleading and a violation of the federal securities laws for a fund that imposes a deferred sales load to be held out to the public as a no-load fund.[33]

E. Exchanges Involving Deferred Loads

The Commission is not proposing any amendments to rule 11a–3 under the Investment Company Act governing exchanges of shares, that relate to deferred sales loads.[34] Back-end and installment loads would fall under the current definition of ''deferred sales load'' in rule 11a–3,[35] and therefore would be covered by the requirements in that rule on the imposition of deferred sales charges in connection with an exchange. The Commission invites comment on whether it should amend the definition of deferred sales load in rule 11a–3 to correspond expressly with the deferred load definition in the proposed amendments to rule 6c–10. The Commission also invites comment on whether rule 11a–3 needs to include any additional provisions for deferred loads.

III. Discussion of Revised Disclosure Requirements

The Commission is proposing new disclosure requirements for deferred sales loads in light of the proposed changes to rule 6c–10 discussed above. These requirements would reflect the rule's scope under the proposed amendments, which would permit loads paid at redemption or in installments. They also respond to the proposed elimination of the limitations in the 1988 proposal that would have required a back-end load to be based on the lower of the NAV at the time of purchase or redemption, and permitted installment loads to be based on the NAV at the time of purchase or on the lower of the NAV at the time of purchase price and the NAV at the time an installment was paid.

A. Fee Table Disclosure

The fee table requirements in Item 2 of Form N–1A currently require disclosure of deferred sales loads, but do not contemplate installment loads the amount of which is based on a price other than the purchase price or redemption proceeds. The Commission is proposing amendments to the fee table requirements to require disclosure concerning all forms of deferred sales loads, including installment loads.

The parenthetical explanation following the caption ''Deferred Sales Load'' in the fee table currently provides for deferred loads to be expressed only as a percentage of the original purchase price or the redemption proceeds. The proposed amendment would replace most of the current wording inside the parentheses with a blank, indicating that a registrant should provide appropriate disclosure describing the basis on which the load is computed. This change reflects the greater variety of load formulations that rule 6c-10 would permit under the proposed amendments: in contrast to the limitations in the rule as adopted and as initially proposed, the proposed amendments would permit deferred loads to be a percentage of the NAV at the time of purchase, redemption, or the payment of an installment, or the higher or lower of those amounts.

The proposed revisions to Instruction 5 to the fee table are intended to clarify how the fee table should address all deferred loads and to respond to the greater range of practices that would be permitted under the proposed amendments. The addition of the word ''total'' would make clear that the response to the ''Deferred Sales Load'' caption for an installment load should be the sum of the installments (e.g., 6%,

[28] 17 CFR 270.6c-10(a)(2). The 1988 proposal also would have prohibited funds from charging deferred loads on capital appreciation. Because under the proposed amendments paragraph (a)(1) would allow deferred loads to be based on the NAV at the time of redemption and at the time an installment is paid, a load could be charged on any capital appreciation to the extent the load is based on the higher of the NAV at purchase or at the time of redemption or load payment.

[29] ABA Subcommittee comment letter, supra note 7, at 8–9; ICI comment letter, *supra* note 7, at 5.

[30] *See infra* section III.B.

[31] A return of capital generally occurs when a fund's distribution exceeds the fund's aggregate amount of undistributed net taxable income and net realized capital gains. *See Determination, Disclosure, and Financial Statement Presentation of Income, Capital Gain, and Return of Capital Distributions by Investment Companies,* American Institute of Certified Public Accountants, Statement of Position 93–2, 8 (Feb. 1, 1993).

[32] NASD, Rules of Fair Practice, Art. III, Sec. 26(d)(3).

[33] *See* 1988 Proposing Release, *supra* note 3, at 45283 (referring, in turn, to an earlier Commission statement of its view).

[34] 17 CFR 270.11a–3. The 1988 proposal did not address rule 11a–3.

[35] Rule 11a–3 defines a ''deferred sales load'' as ''any amount properly chargeable to sales or promotional activities that is or may be deducted upon redemption of all or a portion of a securityholder's interest in an open-end investment company.'' 17 CFR 270.11a–3(a)(3). Deferred loads paid other than upon redemption would fall within this definition because they could be accelerated upon redemption.

rather than 1% a year for six years). Like the 1988 proposal, the proposed amendments would permit a fund to include within the larger fee table a tabular presentation of the schedule of installment payments.[36]

B. General Prospectus Disclosure

The Commission is proposing to require more detailed prospectus disclosure concerning the way in which a specific fund's deferred sales load is imposed and computed. Proposed new Item 7(g) would cover many operational details that have been mandatory for all funds under rule 6c–10 as adopted and as originally proposed but would be subject to greater flexibility under the proposed amendments. These details include the price on which the load is based, whether deferred sales loads may be imposed on shares acquired through reinvestments of distributions, and the way in which the load is calculated.[37] If a fund charges deferred loads on shares from reinvestment of dividends or other distributions, Item 7(g) would require a statement to that effect, but it would not require this disclosure if the fund did not charge such a load. In addition, as a general matter, to the extent that a fund's sales charges do not differ from those of other funds, the disclosure in response to proposed new Item 7(g) should be relatively brief, but to the extent that the fund's charges differ, more detail may be required.[38]

The proposed provision also would require an explanation of the ways in which a shareholder may be required to pay an installment load, such as through the withholding of dividend payments, involuntary redemptions, or separate billing of an investor's account. The Commission also is publishing for comment a revision to staff Guide 30 of the Guidelines for Form N–1A to require funds to describe briefly in the prospectus any tax consequences for investors related to an installment load.[39]

C. Performance Data

The Commission is proposing to amend Instruction 1 to Item 22(b)(i) of Form N–1A to require deferred sales loads to be included in calculations of advertised total return data. The amendment would require the calculation to be based on the deduction of the maximum amount of a deferred sales load at the times, in the amounts, and under the terms disclosed in the prospectus.

The Commission is not proposing to amend Item 22(b)(ii) of Form N–1A to require installment loads to be included in advertised yield calculations. Paragraph (a)(6) of rule 482 under the Securities Act[40] requires advertisements containing yield data to disclose the maximum amount of any sales load; if the sales load is not reflected in performance figures, the advertisement also must disclose that the figures do not reflect the load and that, if reflected, the load would reduce the quoted performance. Because installment loads would not be reflected in yield figures, rule 482(a)(6) would apply to advertisements containing yield figures of funds with installment loads.[41]

The treatment of installment loads in advertised yield calculations would be different from the current treatment of rule 12b-1 fees, which are included in the numerator in the yield formula in Item 22(b)(ii) of Form N–1A as expenses, and thereby reflected in the yield data. Therefore, for example, a fund with a rule 12b-1 fee of 1% would show a lower yield than a fund with comparable performance and an installment load of 1% per year for six years. The Commission requests comment on whether it should require a thirty-day percentage amount of an installment load similarly to be included as an expense in the numerator in the yield formula in Item 22(b)(ii), or, alternatively, require that the installment load be added to the net asset value to reach an assumed ''offering price'' in the denominator in the yield formula. The first alternative would allow greater comparability to rule 12b-1 fees, but would understate the yield for those shareholders that have completed paying the installment load. The second alternative would treat installment loads as if they were front-end loads.

D. Dealer Compensation

The amount of commissions paid to persons selling funds' shares currently is not required to be disclosed in prospectuses, except in the case of front-end sales loads. Item 7(b)(iv) of Form N–1A requires funds to show in a tabular format in the prospectus the sales load reallowed to dealers as a percentage of the public offering price. This requirement currently is deemed to apply only to front-end sales loads. The Commission requests comment on whether it should amend Item 7(b)(iv) to require mutual funds that impose deferred sales loads to provide disclosure about the commissions received by dealers selling the funds' shares comparable to that now provided by funds with front-end loads. Alternately, the Commission requests comment on whether proposed new Item 7(g) should be modified to require such disclosure.

IV. Cost/Benefit Analysis

The proposed amendments to rule 6c-10 and Form N–1A would not impose any significant burdens on mutual funds. Rather, the amendments should benefit funds by providing them with alternatives in financing their sales and promotional expenses. The amendments also would enable investors to defer the payment of a sales charge on the purchase of mutual fund shares until redemption or over one or more installment payments during the term of their investment.

V. Summary Of the Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis. The Analysis explains that the proposed amendments to rule 6c-10 would allow mutual funds to impose deferred sales loads other than CDSLs and would remove certain restrictions in the rule. The Analysis further explains that the proposed amendments to Form N–1A would set prospectus disclosure requirements for deferred loads that reflect the proposed changes to rule 6c-10, but that are similar to the disclosure currently provided by funds and that would not impose any additional burdens. A copy of the Analysis may be obtained by contacting Nadya B. Roytblat, Esq., Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

[36] As currently required by Instruction 1 to the fee table, a fund also would have to provide a reference following the fee table to the discussion of any scheduled variations and other information about installment loads elsewhere in the prospectus.

[37] As noted above, paragraphs (a)(1), (a)(5) and (a)(6) of rule 6c-10 as originally proposed required a load paid at redemption to be based on the lower of the NAV at the time of purchase or redemption; specified the order in which shares should be treated as being redeemed for purposes of load calculation; and prohibited the imposition of deferred loads on reinvested dividends and capital gains distributions.

[38] The General Instructions to Form N–1A emphasize the importance of brevity in describing practices ''that do not differ materially from those of other investment companies.'' General Instruction G (Preparation of the Registration Statement or Amendment), Part A, Instruction 1.

[39] *See, e.g., supra* note 17 (describing potential tax complications suggested by commenters on the original proposal).

[40] 17 CFR 230.482.

[41] A fund's yield advertisement would disclose the amount of an installment load, and the period of time during which a shareholder is subject to the installment load.

VI. Statutory Authority

The Commission is proposing amendments to rule 6c-10 under sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a-6(c), and -37(a)]. The authority citations for the proposed amendments to Form N–1A precede the text of the amendments.

List of Subjects in 17 CFR Parts 239, 270, and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a-37, 80a-39 unless otherwise noted;

* * * * *

Section 270.6c–10 is also issued under sec. 6(c) [15 U.S.C. 80a–6(c)];

* * * * *

2. Section 270.6c-10 is revised to read as follows:

§ 270.6c-10 Exemption for certain open-end management investment companies to impose deferred sales loads.

(a) A company and any exempted person shall be exempt from the provisions of Sections 2(a)(32), 2(a)(35), and 22(d) of the Act [15 U.S.C. 80a-2(a)(32), 80a-2(a)(35), and 80a-22(d), respectively] and § 270.22c-1 to the extent necessary to permit a deferred sales load to be imposed on shares issued by the company, *Provided*, that:

(1) Any deferred sales load is a specified percentage of the net asset value at the time of purchase, redemption, or the payment of an installment;

(2) The terms of the deferred sales load are covered by the provisions of Article III, Section 26 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.; and

(3) The same deferred sales load is imposed on all shareholders, except that scheduled variations in or elimination of a deferred sales load may be offered to a particular class of shareholders or transactions, *Provided*, that the conditions in § 270.22d-1 are satisfied. Nothing in this paragraph (a) shall prevent a company from offering to existing shareholders a new scheduled variation that would waive or reduce the amount of a deferred sales load not yet paid.

(b) For purposes of this section:

(1) *Company* means a registered open-end management investment company, other than a registered separate account, and includes a separate series of the company;

(2) *Exempted person* means any principal underwriter of, dealer in, and any other person authorized to consummate transactions in, securities issued by a company;

(3) *Deferred sales load* means any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

3. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

* * * * *

4. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, and 80a-29, unless otherwise noted.

5. Item 2 of Part A of Form N–1A [referenced in §§ 239.15A and 274.11A] is amended by revising the parenthetical after ''Deferred Sales Load'' in paragraph (a)(i), and Instruction 5, to read as follows:

Note: Form N–1A does not, and the amendment will not, appear in the Code of Federal Regulations.

Form N–1A

* * * * *

Part A. Information Required in a Prospectus

* * * * *

Item 2. Synopsis

(a)(i) * * *

* * * * *

Shareholder Transaction Expenses

* * * * *

Deferred Sales Load (as a percentage of _____); %

* * * * *

Instructions:

* * * * *

Shareholder Transaction Expenses

5. ''Deferred Sales Load'' includes the maximum total deferred sales load payable upon redemption, in installments, or both, expressed as a percentage of the amount or amounts stated in response to Item 7(g), and may include a tabular presentation, within the larger table, of the range over time of any deferred sales load (such as a contingent deferred sales load) that may change over time, or a schedule of any installment load payments.

* * * * *

6. Item 7 of Part A of Form N–1A [referenced in §§ 239.15A and 274.11A] is amended by removing the word ''and'' at the end of paragraph (e), removing the period at the end of paragraph (f) and adding ''; and'' in its place, and adding paragraph (g) to read as follows:

Form N–1A

* * * * *

Part A. Information Required in a Prospectus

* * * * *

Item 7. Purchase of Securities Being Offered

* * * * *

(g) a concise explanation of the way in which any deferred sales load is imposed and computed, including: (i) an explanation of the basis on which the specified percentage is calculated (*e.g.*, the original purchase price, the price at redemption, or the net asset value at the time an installment is paid); (ii) if the method of determining the amount of load results in a load being applied to shares or amounts representing shares acquired through the reinvestment of dividends or other distributions, a statement to that effect; (iii) a description of the way in which the load is calculated (*e.g.*, in the case of a partial redemption, whether or not the load is calculated as if shares or amounts representing shares not subject to a load are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased); and (iv) if applicable, an explanation of the way(s) in which a shareholder may be required to pay an installment load (*e.g.*, through the withholding of dividend payments, involuntary redemptions, separate billing of an investor's account).

7. Item 22 of Part B of Form N–1A [referenced in §§ 239.15A and 274.11A] is amended by adding at the end of Instruction 1 to paragraph (b)(i) a sentence that reads as follows:

Form N–1A

* * * * *

Part B. Information Required in a Statement of Additional Information

* * * * *

Item 22. Calculation of Performance Data

* * * * *

(*b*) *Other Registrants*

(*i*) *Total Return* * * *

Instructions:

1. * * * If shareholders are charged a deferred sales load, assume the maximum deferred sales load is deducted at the times,

in the amounts, and under the terms disclosed in the prospectus.

* * * * *

8. Guide 30 to Form N–1A [referenced in §§ 239.15A and 274.11A] is amended by adding a paragraph before the last paragraph to read as follows:

Guidelines for Form N–1A

* * * * *

Guide 30. Tax Consequences

* * * * *

If the registrant imposes a sales load payable in installments on the securities being offered, the registrant must describe briefly in response to Item 6 any related tax consequences for investors.

* * * * *

Dated: February 23, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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