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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: September 12 at 9:00 am

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

ATLANTA, GA

WHEN: September 20 at 9:00 am

WHERE: Centers for Disease Control and Prevention
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA

RESERVATIONS: 404–639–3528
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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.

Rules and Regulations

Federal Register
Vol. 60, No. 162
Tuesday, August 22, 1995

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 272 and 273

[Amdt. No. 357]

RIN 0584–AB91

Food Stamp Program: Disqualification Penalties for Intentional Program Violations

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes a proposed rulemaking published on August 29, 1994. It amends Food Stamp Program regulations to implement section 13942 of the Mickey Leland Hunger Relief Act, which increases the disqualification penalties for individuals who are found guilty in a Federal, State or local court of trading or receiving food stamp coupons for firearms, ammunition, explosives or controlled substances. This rule also implements a change which makes it easier for a State agency to conduct an administrative disqualification hearing by eliminating the proof of receipt requirement. In addition, this rule clarifies the Department's policy on the imposition of disqualification periods for intentional Program violations. Finally, this rule eliminates two model forms used in administrative disqualification hearings.

DATES: This rule is effective October 23, 1995, except that 7 CFR 273.16(b) is effective retroactive to September 1, 1994.

FOR FURTHER INFORMATION CONTACT: James I. Porter, Supervisor, Issuance and Accountability Section, State Administration Branch, Program Accountability Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2385.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Implementation'' section of this preamble. Prior to any judicial challenge to the provisions of this final rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). William E. Ludwig, Administrator of the Food and Consumer Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect State and local agencies that administer the Food Stamp Program by simplifying the requirements for giving advance notice of hearing to food stamp recipients. It will also modify the penalties applicable to individuals who engage in Program misconduct.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping burden associated with this final rule has been approved by the Office of Management and Budget (OMB) under OMB number 0584–0064. The provisions of this rule do not contain any additional reporting and/or recordkeeping requirements subject to OMB approval.

Background

On August 29, 1994, the Department published a proposed rule at 59 FR 44343 to implement section 13942 of the Mickey Leland Childhood Hunger Relief Act (Pub. L. 103–66) (Leland Act). Section 13942 of the Leland Act amended the Food Stamp Act of 1977 (7 U.S.C. 2011–2032) (the Act) to increase the disqualification penalties for certain types of intentional Program violations. In addition, the proposed rule included regulatory changes with regard to the delivery of administrative disqualification hearing notices and the initiation of disqualification periods for intentional Program violations. The proposed rule also included regulatory changes to eliminate two model forms used in administrative disqualification hearings.

The Department received nine comment letters which addressed provisions of the proposed rule. All of the commenters were State agencies. The Food and Consumer Service has given careful consideration to all comments received. The major concerns of the commenters are discussed below. For additional information on the provisions discussed in this rule, the reader should refer to the preamble of the proposed rule at 59 FR 44343–46.

Increased Disqualification Penalties for Intentional Program Violations

Section 13942 of the Leland Act requires that an individual be disqualified for 12 months for a first finding by a court, and permanently for a second finding by a court that the person has either traded or received controlled substances using food stamp coupons. This section of the Leland Act also requires that an individual be permanently disqualified for the first finding by a court that the individual has either traded or received firearms, ammunition, or explosives using food stamp coupons. Of the nine comment

letters received, two commenters specifically supported this provision of the proposed rule. However, some commenters had concerns on the applicability of the increased penalties.

Two commenters were concerned about the applicability of the increased penalties to deferred adjudications. The proposed rule would have applied the increased penalties in cases with deferred adjudication if a finding of culpability has been made. The first commenter felt that some deferred adjudications should not be subjected to the increased penalties and that specific criteria should be established for having deferred adjudications result in the same increased penalties as would apply to an adjudication by a court. The second commenter felt that the finding of culpability clause would require State agencies to conduct a difficult and costly analysis of the court order or terms of the deferred adjudication. The Department recognizes that there are complexities involved in making the proper determination of whether a finding of culpability exists. However, given the fact that the standard penalties are applied in instances of deferred adjudication, the Department believes the increased penalties should also be imposed when applicable in cases of deferred adjudication. Therefore, the Department has retained 7 CFR 273.16(b)(4) of the final rule, as proposed.

One commenter requested clarification as to whether the penalties applied to non-recipients as well as recipients. Section 6(b)(1) of the Act refers to any ''person'' and not ''recipient'' in its discussion of applying disqualification penalties. The Act also provides that penalties apply to ''further participation in the Program.'' The language in the proposed rule at § 273.16(b)(1), which discusses the application of the penalties, is consistent with the Act in that it uses ''individual'' and not ''recipient'' or ''household member.'' The disqualification penalties apply to any individual found to have committed an intentional Program violation regardless of whether he/she is a recipient. The provision in § 273.16(a)(1) states that the disqualification shall take effect in such cases immediately after the individual applies and is found eligible to participate in the Program.

One commenter recommended a revision to the proposed rule at § 273.16(b)(5) to clarify the Department's intent. The commenter suggested using the phrase ''* * * fails to impose a disqualification or a disqualification period * * *'' instead of ''* * * fails to impose a disqualification period * * *'' as proposed in § 273.16(b)(5). The reason for the suggested change, according to the commenter, is because questions have arisen regarding the Department's intent on whether a disqualification period should be imposed if the court finds that the intentional Program violation was committed but does not specify in the court order whether there should be a disqualification. The Department's longstanding position on this issue is to have the appropriate disqualification period imposed by the State agency unless it is expressly forbidden by the court or a different disqualification period is specified in the court order. Therefore, the Department is including in the final rule the clarification to 7 CFR 273.16(b)(5) suggested by the commenter.

In addition to changes reflected in the final rule because of the comments received regarding this provision, the Department is revising a paragraph in the regulations for clarification purposes. This paragraph discusses the treatment of disqualifications which occurred prior to the implementation of the disqualification periods set forth in a February 15, 1983 rulemaking (48 FR 6836). The final rule provides clarification in 7 CFR 273.16(b)(6) and 7 CFR 273.16(i)(5) by referring to the actual implementation date (April 1, 1983) of the provision contained in the February 15, 1983 rulemaking instead of making reference to the paragraph containing the penalties. The change has no substantive effect and is for purposes of clarification only.

Advance Notice of Administrative Disqualification Hearings

The Department proposed giving State agencies the option to deliver advance notices of administrative disqualification hearings via first class mail. The current regulations at 7 CFR 273.16(e)(3)(i) require that, if notices are mailed, they must be sent via certified mail—return receipt requested, and proof of receipt must be obtained. The proposed rule essentially eliminates the proof of receipt requirement. Of the nine comment letters received, six commenters specifically supported this provision of the proposed rule. However, some commenters had concerns regarding its applicability.

One commenter supported this proposal as a State agency option, rather than a requirement, citing that flexibility is necessary because of differences between State agencies in Program administration. The proposed rule would, in fact, make it an option by stating that, if mailed, the notice would be sent either via first class or certified mail-return receipt requested. The Department is keeping this as an option in the final rule.

One commenter suggested that the Department add a qualifier to specify that returned first class mail constitutes failure to provide advance notice of an administrative disqualification hearing. In this manner, the commenter felt that the rule would be clear that the hearing would be canceled in such an event. The current regulations at 7 CFR 273.16(e)(4) state that if the affected individual ''* * * cannot be located * * * the hearing shall be conducted without the household member being represented.'' This is not being changed in the final rule.

The Department proposed to make non-receipt of an advance notice a good cause criterion under 7 CFR 273.16(e)(4). Under the proposal, if the household member shows non-receipt of the notice in a timely fashion, any previous decision determined *in absentia* would no longer remain valid and the State agency would conduct a new hearing. The Department received a comment concerning the issue of what constituted a ''showing of non- receipt'' of the hearing notice in order to request a new hearing. The Department has determined that the circumstances in which non-receipt constitutes a good cause should be left up to each State agency to decide. This is being done to increase the degree of State agency flexibility in this area. However, each State agency's policy regarding the required circumstances shall be consistently applied within the State agency. This is reflected in 7 CFR 273.16(e)(3)(ii) in the final rule.

The Department also received three comments concerning the issue of what is considered ''timely fashion'' for individuals to show non-receipt of an advance notice. Two commenters stated that ''timely fashion'' needs to be defined. One commenter was concerned about the relevance to the current regulations at 7 CFR 273.16(e)(4) which state that the household has 10 days from the date of the scheduled hearing to present reasons indicating good cause for failure to appear at the hearing. The commenter suggested that the existing 10-day limit for presenting good cause be eliminated. The Department feels that the existing 10- day limit should remain intact for circumstances in which the individual is claiming good cause based upon circumstances other than non-receipt of the notice of the hearing. However, because mailing the hearing decision acts as a notice to the recipient of what occurred, the Department has determined that it is more meaningful to define ''timely

fashion'' for a good cause claim of non-receipt of the notice of hearing as being within 30 days after the date of the written notice of the hearing decision. This is reflected in 7 CFR 273.16(e)(4) in the final rule.

Imposition of Disqualification Penalties

The proposed rule clarifies existing regulations at 7 CFR 273.16(a), (e), (f) (g) and (h) by stating that an individual disqualified while not currently participating in the Food Stamp Program would have his/her disqualification period begin immediately after applying for and becoming eligible to receive benefits. This clarification became necessary because the use of the word ''postponed'' in the current regulations, when compared to ''immediately'' in the Act, became a cause of confusion which led to some court suits.

Of the nine comments received for this proposed rule, two commenters specifically supported this proposal. However, two other commenters had concerns regarding its applicability.

The first commenter stated that ''immediately'' should be interpreted to signify that the disqualification period begins once the appropriate State agency staff becomes aware that the individual to be disqualified has returned to the Program. The commenter further stated that this is a problem if the State agency is not promptly notified by the court of the decision. While the Department recognizes that disqualifying individuals may require coordination among various agencies within the State, the Department feels that allowing the disqualification to be delayed simply because the appropriate individuals within the State agencies are unaware of its existence is unfair to the individual being disqualified.

The second commenter suggested a wording change in § 273.16(a)(1) of the proposed rule. The commenter recommended changing ''nonparticipants,'' in the last sentence of this section, to ''persons not eligible to participate in the Program.'' The reason for the suggestion, according to the commenter, is for consistency purposes. The Department concurs that a wording change is necessary for clarification purposes. However, the Department feels that the change suggested by the commenter needs to be expanded. The basis for this is that the commenter's wording may suggest that the decision on the timing of the disqualification when the intentional Program violation determination is made is based on whether the individual is eligible to participate. This implies that an eligibility determination must be completed at the time the intentional Program violation determination is rendered. This is not the Department's intent. The wording used in 7 CFR 273.16(a)(1) in the final rule, ''* * * persons not currently certified to participate in the Program * * *,'' accurately describes the Department's intent because there is no implication of a test of eligibility.

Model Forms

The proposed rule would eliminate reference to the Food and Consumer Service providing two model forms currently used in the administrative disqualification hearing process. Most State agencies have designed their own State-specific forms based on regulatory requirements, thus reducing the effectiveness of and need for these models. No comments were received regarding this proposal. As part of an ongoing effort to do away with unnecessary Federal forms while affording State agencies maximum flexibility, the Department will no longer be providing these model forms.

Implementation

No comments were received on the implementation dates. The provision relating to the increased penalties at 7 CFR 273.16(b) is effective and was to be implemented no later than September 1, 1994. Current regulations at 7 CFR 273.2(b)(ii) and 7 CFR 273.16(d) require that the notice of disqualification penalties be included on the Food Stamp application form. Therefore, the Department, on March 16, 1994, issued an implementation memorandum requiring notice of the enhanced intentional Program violation disqualification penalties to be included on the Food Stamp application form by September 1, 1994.

The remaining provisions are effective and must be implemented October 23, 1995.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food Stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR parts 272 and 273 are amended as follows:

1. The authority citation of Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph(g)(142) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(142) *Amendment No. 357.* The provisions of Amendment No. 357 are effective and must be implemented as follows:

(i) The provision relating to the increased penalties at 7 CFR 273.16(b) is effective and must be implemented retroactive to September 1, 1994. This includes providing notification of the increased penalties on the application form.

(ii) The remaining provisions are effective and must be implemented October 23, 1995.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.16:

a. The last sentence of paragraph (a)(1) is revised;

b. Paragraph (b) is revised;

c. Paragraph (e)(3) is revised;

d. The next to last sentence of paragraph (e)(4) is removed, and two sentences are added in its place;

e. Paragraph (e)(8)(iii) is revised;

f. The last sentence of paragraph (e)(9)(iii) is removed;

g. Paragraph (f)(2)(iii) is revised;

h. Paragraph (g)(2)(ii) is revised;

i. Paragraph (h)(1)(ii)(C) is revised;

j. Paragraph (h)(2)(ii) is revised; and

k. The second sentence of paragraph (i)(5) is revised.

The revisions and additions read as follows:

§ 273.16 Disqualification for intentional Program violation.

(a) *Administrative responsibility.* (1) * * * For those persons not currently certified to participate in the Program at the time of the administrative disqualification or court decision, the disqualification period shall take effect immediately after the individual applies for and is determined eligible for Program benefits.

* * * * *

(b) *Disqualification penalties.* (1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an

administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of six months for the first intentional Program violation, except as provided under paragraphs (b)(2) and (b)(3) of this section;

(ii) For a period of twelve months upon the second occasion of any intentional Program violation, except as provided in paragraphs (b)(2) and (b)(3) of this section; and

(iii) Permanently for the third occasion of any intentional Program violation.

(2) Individuals found by a Federal, State or local court to have used or received coupons in a transaction involving the sale of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) shall be ineligible to participate in the Program:

(i) For a period of twelve months upon the first occasion of such violation; and

(ii) Permanently upon the second occasion of such violation.

(3) Individuals found by a Federal, State or local court to have used or received coupons in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the Program upon the first occasion of such violation.

(4) The penalties in paragraphs (b)(2) and (b)(3) of this section shall also apply in cases of deferred adjudication as described in paragraph (h) of this section, where the court makes a finding that the individual engaged in the conduct described in paragraph (b)(2) or (b)(3) of this section.

(5) If a court fails to impose a disqualification or a disqualification period for any intentional Program violation, the State agency shall impose the appropriate disqualification penalty specified in paragraphs (b)(1), (b)(2) or (b)(3) of this section unless it is contrary to the court order.

(6) One or more intentional Program violations which occurred prior to April 1, 1983 shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration.

(7) Regardless of when an action taken by an individual which caused an intentional Program violation occurred, the disqualification periods specified in paragraphs (b)(2) and (b)(3) of this section shall apply to any case in which the court makes the requisite finding on or after September 1, 1994.

(8) State agencies shall disqualify only the individual found to have committed the intentional Program violation, or who signed the waiver of the right to an administrative disqualification hearing or disqualification consent agreement in cases referred for prosecution, and not the entire household.

(9) Even though only the individual is disqualified, the household, as defined in § 273.1, is responsible for making restitution for the amount of any overpayment. All intentional Program violation claims shall be established and collected in accordance with the procedures set forth in § 273.18.

* * * * *

(e) *Disqualification hearings.* * * *

(3) *Advance notice of hearing.* (i) The State agency shall provide written notice to the individual suspected of committing an intentional Program violation at least 30 days in advance of the date a disqualification hearing initiated by the State agency has been scheduled. If mailed, the notice shall be sent either first class mail or certified mail-return receipt requested. The notice may also be provided by any other reliable method. If the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held.

(ii) If no proof of receipt is obtained, a timely (as defined in paragraph (e)(4) of this section) showing of nonreceipt by the individual due to circumstances specified by the State agency shall be considered good cause for not appearing at the hearing. Each State agency shall establish the circumstances in which non-receipt constitutes good cause for failure to appear. Such circumstances shall be consistent throughout the State agency.

(iii) The notice shall contain at a minimum:

(A) The date, time, and place of the hearing;

(B) The charge(s) against the individual;

(C) A summary of the evidence, and how and where the evidence can be examined;

(D) A warning that the decision will be based solely on information provided by the State agency if the individual fails to appear at the hearing;

(E) A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

(F) A warning that a determination of intentional Program violation will result in disqualification periods as determined by paragraph (b) of this section, and a statement of which penalty the State agency believes is applicable to the case scheduled for a hearing;

(G) A listing of the individual's rights as contained in § 273.15(p);

(H) A statement that the hearing does not preclude the State or Federal Government from prosecuting the individual for the intentional Program violation in a civil or criminal court action, or from collecting any overissuance(s); and

(I) If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

(iv) A copy of the State agency's published hearing procedures shall be attached to the 30-day advance notice or the advance notice shall inform the individual of his/her right to obtain a copy of the State agency's published hearing procedures upon request.

(v) Each State agency shall develop an advance notice form which contains the information required by this section.

(4) *Scheduling of hearing.* * * * In instances where good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice as specified in paragraph (e)(3)(ii) of this section, the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. * * *

* * * * *

(8) *Imposition of disqualification penalties.* * * *

(iii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately after the individual applies for and is determined eligible for benefits.

* * * * *

(f) *Waived hearings.* * * *

(2) *Imposition of disqualification penalties.* * * *

(iii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately after the individual applies for and is determined eligible for benefits.

* * * * *

(g) *Court Referrals.* * * *

(2) *Imposition of disqualification penalties.* * * *

(ii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately

after the individual applies for and is determined eligible for benefits.

* * * * *

(h) *Deferred adjudication.* * * *

(1) *Advance notification.* * * *

(ii) * * *

(C) A warning that the disqualification periods for intentional Program violations under the Food Stamp Program are as specified in paragraph (b) of this section, and a statement of which penalty will be imposed as a result of the accused individual having consented to disqualification.

* * * * *

(2) *Imposition of disqualification penalties.* * * *

(ii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately after the individual applies for and is determined eligible for benefits.

* * * * *

(i) *Reporting requirements.* * * *

(5) * * * However, one or more intentional Program violations which occurred prior to April 1, 1983 shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration, regardless of where the disqualification(s) took place. * * *

* * * * *

Dated: August 15, 1995.

George A. Braley,

Acting Administrator, Food and Consumer Service.

[FR Doc. 95–20687 Filed 8–21–95; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–121–AD; Amendment 39–9334; AD 95–17–05]

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A310 series airplanes, that requires inspections to detect loose self-locking nuts and damaged cotter pins on the actuating cylinder to drag strut attachment of the left- and right-hand main landing gear (MLG), and correction of discrepancies. This amendment also provides an optional terminating action for the repetitive inspections. This amendment is prompted by reports of loose nuts and sheared cotter pins found on in-service airplanes. The actions specified by this AD are intended to prevent an undampened free fall of the left- and right-hand MLG, which subsequently could lead to the inability to retract the MLG and damage to other airplane systems.

DATES: Effective September 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Messier Services, 45635 Willow Pond Plaza, Sterling, Virginia 20164. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A310 series airplanes was published in the **Federal Register** on November 19, 1993 (58 FR 61037). That action proposed to require repetitive inspections to detect loose self-locking nuts and damaged cotter pins on the actuating cylinder to drag strut attachment of the left- and right-hand main landing gear (MLG). That action also proposed to require replacement of loose nuts with new washers and new nuts, and torque tightening the nuts; replacement of damaged cotter pins with new cotter pins; and submission of inspection reports.

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

One commenter supports the proposed rule.

Certain commenters request that the proposed rule be revised to cite the latest revision of Messier Bugatti Airbus A310 Service Bulletin 470–32–744 as an additional source of service information. The FAA concurs. Since the issuance of the proposed rule, Messier Bugatti (the manufacturer of the MLG assembly) has issued Revision 1 of Messier Bugatti Airbus A310 Service Bulletin 470–32–744, dated January 13, 1994. This revised service bulletin is essentially identical to the original version and does not entail any additional work. Therefore, the final rule has been revised to reference Revision 1 of the service bulletin as an additional source of service information.

Three commenters request that the FAA revise the proposal to reference the accomplishment of the modification procedures described in Messier Bugatti Airbus A310 Service Bulletin 470–32–760 as a terminating modification for the repetitive inspection requirements. One of these commenters states that the modification described in this service bulletin includes a new hinge pin design that will preclude the previously identified problems.

The FAA concurs. Since issuance of the proposed rule, Messier Bugatti has issued Airbus A310 Service Bulletin 470–32–760, dated December 31, 1993, as revised by Change Notice 1, dated January 28, 1994. This service bulletin describes procedures for modification of the actuating cylinder/drag strut attachment of the MLG. The modification entails modifying the greasing duct to enable simultaneous rotation of the duct and cupel. The modification also entails modifying the anti-warping washer to provide rotation play with the actuating cylinder hinge pin. The modification will eliminate the risk of rupture of the cotter pin. Accomplishment of this modification eliminates the need for the repetitive inspections. Additionally, Airbus has issued Service Bulletin A310–32–2076, Revision 1, dated December 13, 1994, which references this Messier Bugatti service bulletin and is essentially identical to it.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory. However, the FAA finds that the actions specified in the service bulletins may be provided as an optional terminating modification for the repetitive inspection requirements of the AD. The FAA has determined not to mandate the modification, since the inspection area is easily accessible, the discrepancies can be easily detected, and the inspection is easily performed without the need to remove any intervening structure. The FAA has added a new paragraph (c) to the final rule, which provides for this

modification as optional terminating action for the required repetitive inspections.

Additionally, since issuance of the notice, Airbus has issued Service Bulletin A310–32–2069, Revision 1, dated December 13, 1994, which references the Messier Bugatti Airbus A310 Service Bulletin 470–32–744 that was cited in the proposal as the appropriate source of service information for procedures to inspect the cotter pins. The Airbus service bulletin is essentially identical to the corresponding Messier Bugatti service bulletin. The DGAC classified these service bulletins as mandatory in order assure the continued airworthiness of these airplanes in France and issued French airworthiness directive 93–039–143(B)R2, dated December 7, 1994, in order to assure the continued airworthiness of these airplanes in France. The FAA has revised the final rule to include these Airbus service bulletins as additional sources of service information.

The FAA has reviewed the requirements of the proposed paragraphs (a)(1) and (a)(2) and has determined that clarification is necessary. The actions proposed in those paragraphs were intended to be parallel to those recommended by the manufacturer in its referenced service bulletin. The intent of these requirements was to require the replacement of any loose nut and/or damaged cotter pin with a new nut, washer, and cotter pin; and to require the installation of a new cotter pin if no loose nut or no damaged cotter pin is found. However, as the proposed AD was worded, operators could incorrectly interpret the requirements as meaning that they must replace a loose nut only with a new nut, and replace a damaged cotter pin only with a new cotter pin. The operators also could incorrectly interpret the wording to mean that the installation of a new cotter pin would not be necessary if a loose nut or damaged cotter pin were found. In light of this, the FAA has determined that the wording of proposed paragraphs (a)(1) and (a)(2) must be revised to clarify its intent. These paragraphs of the final rule contain the clarifying wording.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

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

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 added to this final rule to clarify this long-standing requirement.

The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,260, or $60 per airplane, per inspection cycle.

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

Should an operator elect to accomplish the optional terminating action that is provided by this AD action, the number of hours required to accomplish it will be approximately 7 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,968 per airplane. Based on these figures, the total cost impact of the optional terminating action on U.S. operators would be $2,388 per airplane.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–17–05 Airbus Industrie: Amendment 39–9334. Docket 93–NM–121–AD.

Applicability: All Model A310 series 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 (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 airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent an undampened free fall of the left- and right-hand main landing gear (MLG), which subsequently could lead to the inability to retract the MLG and damage to other airplane systems, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform an inspection to detect loose self-locking nuts and damaged (sheared or marked) cotter pins on the actuating cylinder to drag strut attachment of the left- and right-hand MLG, in accordance with Messier Bugatti Airbus A310 Service Bulletin 470–32–744, dated March 31, 1993, or Revision 1, dated January 13, 1994; or Airbus Service Bulletin A310–32–2069, Revision 1, dated December 13, 1994. Repeat this inspection thereafter at intervals not to exceed 500 landings.

(1) If no nut is loose or no cotter pin is damaged, prior to further flight, install a new cotter pin, in accordance with the service bulletin. After replacement, continue to repeat the inspection at intervals not to exceed 500 landings

(2) If any nut is loose or any cotter pin is damaged (sheared or marked), prior to further flight, replace the nut, washer, and cotter pin with a new nut, washer, and cotter pin; and torque tighten the nut; in accordance with the service bulletin. After replacement, continue to repeat the inspection at intervals not to exceed 500 landings.

(b) Within 5 days after accomplishing the requirements of paragraph (a) this AD, report all inspection results, positive or negative, to Messier-Bugatti and Airbus Industrie in accordance with Messier-Bugatti Airbus A310 Service Bulletin 470–32–744, dated March 31, 1993, or Revision 1, dated January 13, 1994. 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.

(c) Modification of the actuating cylinder/drag strut attachment of the MLG, in accordance with Messier Bugatti Airbus A310 Service Bulletin 470–32–760, dated December 31, 1993, as revised by Change Notice 1, dated January 28, 1994; or Airbus Service Bulletin A310–32–2076, Revision 1, dated December 13, 1994; constitutes terminating action for the repetitive inspection 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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

(e) Special flight permits may be issued in accordance with §§ 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 inspection shall be done in accordance in accordance with the following service bulletins, which contain the specified list of effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
Messier Bugatti, 470–32–744, Mar. 31, 1993	1–7	Original	Mar. 31, 1993.
Messier Bugatti, 470–32–744, Revision 1, Jan. 13, 1994	1–3, 5–6	1	Jan. 13, 1994.
	4	Original	Mar. 31, 1993.
Airbus, A310–32–2069, Revision 1, Dec. 13, 1994	1–6, 8–9, 13	1	Dec. 13, 1994.
	7, 10–12	Original	July 29, 1993.

If accomplished, the modification shall be done in accordance with Messier Bugatti Airbus A310 Service Bulletin 470–32–760, dated December 31, 1993, as revised by Change Notice 1, dated January 28, 1994; or Airbus Service Bulletin A310–32–2076, Revision 1, dated December 13, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–2, 4–8	1	Dec. 13, 1994.
3, 9–11	Original	Dec. 14, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Messier Services, 45635 Willow Pond Plaza, Sterling, Virginia 20164. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 21, 1995.

Issued in Renton, Washington, on August 3, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–19652 Filed 8–21–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–143–AD; Amendment 39–9342; AD 95–17–12]

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires modification of the trimmable horizontal stabilizer (THS). This amendment is prompted by a report of leakage from some of the hydraulic pipe fittings after a lightning strike. The actions specified by this AD are intended to prevent such leakage from hydraulic pipe fittings, which could result in the loss of the pilot's ability to control the moveable surfaces of the THS.

DATES: Effective September 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 21, 1995.

ADDRESSES: 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was published in the **Federal Register** on December 27, 1994 (59 FR 66491). That action proposed to require modification of the trimmable horizontal stabilizer (THS).

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

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the compliance time for accomplishment of the modification be extended from the proposed 3,500 flight hours to 4,500 flight hours. This commenter states that such an extension will allow the modification to be accomplished during a regularly scheduled ''C'' check. This commenter states that it would have to special schedule its fleet of airplanes in order to accomplish the proposed modification within the proposed compliance time. This would entail considerable additional expenses and schedule disruptions.

The FAA does not concur with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the required modification within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. Since maintenance schedules may vary from operator to operator, there would be no assurance that the modification will be accomplished during that time. The manufacturer has advised that an ample number of required parts will be available for modification of the U.S. fleet within the proposed compliance period. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

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

The FAA estimates that 99 airplanes of U.S. registry will be affected by this AD, that it will take approximately 13 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $77,220, or $780 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–17–12 Airbus Industrie: Amendment 39–9342. Docket 94–NM–143–AD.

Applicability: Model A320 series airplanes on which Airbus Modification 22621 (reference Airbus Service Bulletin A320–27–1041) and Airbus Modification 23556 (reference Airbus Service Bulletin A320–29–1058) have not been installed, 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 (b) 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 airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the pilot's ability to control the moveable surfaces of the THS, accomplish the following:

(a) Within 3,500 flight hours after the effective date of this AD, modify the trimmable horizontal stabilizer in accordance with Airbus Service Bulletin A320–29–1058, July 16, 1993, and Airbus Service Bulletin A320–27–1041, Revision 2, dated April 20, 1994.

(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 modification shall be done in accordance with Airbus Service Bulletin A320–29–1058, July 16, 1993, and Airbus Service Bulletin A320–27–1041, Revision 2, dated April 20, 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 September 21, 1995.

Issued in Renton, Washington, on August 11, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–20371 Filed 8–21–95; 8:45 am]

BILLING CODE 4910–13–U

Office of the Secretary

14 CFR Parts 200, 201, 203, 204, 206, 215, 232, 271, 272, 291, 294, 296, 297, 298, 300, 313, 324, 325, 372, 379, 398, and 399

[Docket No. OST–95–397]

RIN 2105–AC–27

Aviation Economic Rules

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final rule.

SUMMARY: The Department is amending various provisions regarding aviation economic rules in order to eliminate obsolete provisions and correct outdated organizational and statutory references.

EFFECTIVE DATE: The rule shall become effective on September 21, 1995.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness Division, X–56, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION: In his Regulatory Reinvention Initiative Memorandum of March 4, 1995, President Clinton directed Federal agencies to conduct a page-by-page review of all of their regulations and to ''eliminate or revise those that are outdated or otherwise in need of reform.'' In response to that directive, the Department has undertaken a review of its aviation economic regulations as contained in 14 CFR Chapter II. This rule is one result of those efforts. Subsequent rulemakings will address other regulations.

We had conducted a review of a number of our aviation economic regulations in 1992 and eliminated Parts 202, 231, 263, 288 and 292 and revised Parts 200, 201, 203, 204, 206, 232, 291, 294, 296, 297, 298, and 372 at that time (*see* 57 FR 38761, Aug. 27, 1992, and 57 FR 40097, Sept. 2, 1992). We reexamined the rules we revised in 1992 as part of our current regulatory review and found that they and a number of other regulations (including Parts 215, 271, 272, 300, 313, and 398) now require only minor changes to eliminate obsolete provisions and to correct outdated titles of Department organizations and officials, and definitions and other terminology necessitated by legislative changes, including the revision and recodification of the Federal Aviation Act within Subtitle VII of Title 49 of the United States Code (Transportation) by action of Pub. L. 103–272, enacted July 5, 1994.

Part 398 is being amended in order to incorporate the service upgrades for ''basic'' essential air service contained in the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223, December 30, 1987). In general, the upgrades consist of (a) service with 15-seat or larger aircraft, (b) service with pressurized aircraft in cases where such service is regularly operated at altitudes exceeding 8,000 feet, (c) service to a large or medium hub, (d) service with no more than one intermediate stop, (e) seating capacity based on an average load factor of 60 percent, and (f) a provision that flights be operated at reasonable times, taking into account the needs of passengers with connecting flights. The Department actually implemented the required upgrades during Fiscal Year 1992 when Congress appropriated the necessary program funds. We are now formalizing those requirements in the Department's regulations. Finally, Pub. L. 100–223 also contained provisions for a higher level of service called ''enhanced'' essential air service. Because ''enhanced'' service has not been funded or implemented, however, we are not incorporating its provisions within Part 398 at this time.

In addition, Parts 324 and 379, and several sections in Parts 325 and 399 are being eliminated due to obsolescence.

Part 324 contains procedures for establishing final subsidy rates for air carriers providing temporary, compulsory service at small communities under 49 U.S.C. 41734 in cases where the rates would be applied retroactively—*i.e.*, when the period of compulsory service has already begun or has concluded. Part 324 was established to compensate carriers for losses after the fact. Subsequent revision of the governing statute, however, permits the Department to establish such compensation prospectively under the existing provisions contained in 14 CFR Part 271 at the beginning of the period of compulsory service. Because the Department now practices prospective ratemaking routinely, Part 324 is no longer necessary and is being eliminated.

Part 325 contains general guidelines for the Department's establishment of communities' essential air service determinations under 49 U.S.C. 41733. We are eliminating § 325.7 through § 325.9, which establish a three-member panel and special procedures for handling appeals. That process has become increasingly unwieldy and unresponsive. Without the appeal process, communities can directly seek review of such Department actions under § 302.37—Petitions for Reconsideration or Review by the DOT Decisionmaker. We expect that this change will considerably improve the Department's response time by streamlining the process and removing a bureaucratic layer between communities and the DOT decisionmaker.

Part 379 was established by the CAB to ensure that no person, on the grounds of race, color or natural origin, would be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the CAB. The Civil Aeronautics Board Sunset Act of 1984 (P.L. 98–443) transferred that agency's remaining authority to the Department as of January 1, 1985. The CAB regulations implementing Title VI of the Civil Rights Act of 1964 were virtually identical to those implemented by the Department under 49 CFR Part 21. Under the circumstances, the old CAB regulations are redundant, and Part 379 is being eliminated.

We are also removing three sections of Part 399 (§§ 399.20, .38, and .90) that are no longer needed. Section 399.20 is a policy statement issued by the CAB covering procedures for processing applications of long-haul general commodities motor carriers and railroads for authorization to act as air freight forwarders. U.S. companies proposing to operate as air freight forwarders are no longer required to file applications for such authority, in accordance with the blanket exemption granted by § 296.10. Foreign companies proposing to act as air freight forwarders file applications that are processed in accordance with Part 297. Therefore, § 399.20 may be removed. Section 399.38 concerns the establishment of temporary subsidy rates for air carriers serving small communities under 49 U.S.C. 41734 in cases where subsidy

payments are deemed necessary for the continuation of service until final rates are estabished at a later date. As a practical matter, the Department now routinely establishes all rates as final. Therefore, section 399.38 is no longer necessary. Section 399.90 states the CAB's policy on making public interest determinations concerning non-transport activities of air carriers that received mail transport subsidy under former section 406 of the Federal Aviation Act. Carriers no longer receive subsidy for transporting mail; therefore, the Department no longer makes public interest determinations concerning their non-transport activities. Section 399.90 can thus be eliminated.

We have also identified certain regulations that require substantive revision (including Parts 205, 207, 208, 212, 302, 323, 380, and 385), which will be treated in separate rulemakings in the near future.

Executive Order 12866 (Regulatory Planning and Review)

The Department has analyzed the economic and other effects of the proposed amendment and has determined that they are not ''significant'' within the meaning of Executive Order 12866. The amendment will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise any novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, a regulatory impact analysis is not required.

DOT Regulatory Policies and Procedures

The amendments are not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because they do not involve important Departmental policies; rather, they are being made solely for the purposes of eliminating obsolete requirements, correcting out-of-date references, and enhancing the organization of the regulations used by the Department to administer its aviation economic regulatory functions. The Department has also determined that the economic effects of the amendment are so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the Department has evaluated the effects of this action on small entities. For purposes of its aviation economic regulations, Departmental policy categorizes air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) as small entities for purposes of the Regulatory Flexibility Act. Based upon this evaluation, the Department certifies that the amendment would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism)

These amendments have been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The Department has determined that the amendments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The amendments will not have a substantial direct effect 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.

National Environmental Policy Act

The Department has also analyzed the amendments for the purpose of the National Environmental Policy Act. The amendments will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

There are no reporting or recordkeeping requirements associated with the amendments.

Notice and Opportunity for Public Comment Unnecessary

Under the Administrative Procedure Act (5 U.S.C. § 553), the Department determines that notice and an opportunity for public comment are impracticable, unnecessary, and contrary to the public interest. The amendments made in this document are ministerial, removing obsolete and redundant material or making minor technical and terminology changes. These changes will have no substantive impact, and the Department would not anticipate receiving meaningful comments on them. Comment is therefore unnecessary, and it would be contrary to the public interest to delay unnecessarily this effort to eliminate or revise outdated rules.

List of Subjects

14 CFR Part 200

Air transportation.

14 CFR Part 201

Air carriers, Reporting and recordkeeping requirements.

14 CFR Part 203

Air carriers, Air transportation, Foreign relations, Insurance, Reporting and recordkeeping requirements.

14 CFR Part 204

Air carriers, Reporting and recordkeeping requirements.

14 CFR Part 206

Air carriers, Emergency medical services, News media.

14 CFR Part 215

Air carriers, Reporting and recordkeeping requirements, Trade names

14 CFR Part 232

Administrative practice and procedure, Air carriers, Postal Service.

14 CFR Part 271

Air carriers, Grant programs—transportation.

14 CFR Part 272

Air carriers, Grant programs—transportation, Pacific Islands Trust Territory.

14 CFR Part 291

Administrative practice and procedure, Air carriers, Reporting and recordkeeping requirements.

14 CFR Part 294

Air taxis, Canada, Charter flights, Reporting and recordkeeping requirements.

14 CFR Parts 296 and 297

Air carriers, Freight forwarders.

14 CFR Part 298

Air taxis, Alaska, Canada, Insurance, Reporting and recordkeeping requirements.

14 CFR Part 300

Administrative practice and procedure, Conflict of interests.

14 CFR Part 313

Air carriers, Energy conservation.

14 CFR Part 324

Administrative practice and procedure, Air carriers, Grant

programs—transportation, Reporting and recordkeeping requirements.

14 CFR Part 325

Administrative practice and procedure, Air transportation, Intergovernmental relations, Reporting and recordkeeping requirements.

14 CFR Part 372

Charter flights, Military air transportation, Reporting and recordkeeping requirements, Surety bonds.

14 CFR Part 379

Administrative practice and procedure, Civil rights.

14 CFR Part 398

Air transportation.

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

Final Rule

For the reasons set out in the preamble, Title 14, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—[AMENDED]

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

Authority: 49 U.S.C. Chapters 401, 411, 413, 415, 417, 461.

§ 200.1 [Amended]

2. In § 200.1 introductory text and in paragraphs (d) and (e), remove the word ''Act'' and add, in its place, the word ''Statute''; add new paragraphs (f) and (g) to read as follows:

§ 200.1 Terms and definitions.

* * * * *

(f) *Statute* when used in this chapter means Subtitle VII of Title 49 of the United States Code (Transportation).

(g) *FAA* means the Federal Aviation Administration, U.S. Department of Transportation.

PART 201—AIR CARRIER AUTHORITY UNDER SUBTITLE VII OF TITLE 49 OF THE UNITED STATES CODE—[AMENDED]

3. The heading of part 201 is revised to read as set forth above.

4. The authority citation for part 201 is revised to read as follows:

Authority: 5 U.S.C. 1008; 49 U.S.C. Chapters 401, 411, 413, 415, 417.

§ 201.1 [Amended]

5. In § 201.1(a), remove the words ''section 401 of the Federal Aviation Act and for domestic all-cargo air service certificates under section 418 of the Act, or amendments thereof,'' and add, in their place, the words ''section 41102 of the Statute and for interstate all-cargo air transportation certificates under section 41103 of the Statute''.

§ 201.4 [Amended]

6. In § 201.4(c), remove the words ''and overseas''; remove the words ''section 401'' where they appear twice, and add, in their place, the words ''section 41102 of the Statute''; remove the words ''domestic all-cargo air transportation under section 418'' and add, in their place, the words ''interstate all-cargo air transportation under section 41103 of the Statute''.

§ 201.6 [Amended]

7. In § 201.6, remove the words ''section 401 or section 418 of the Act'' and add, in their place, the words ''section 41102 or section 41103 of the Statute''.

§ 201.7 [Amended]

8. In § 201.7(a), remove the words ''title IV of the Act'' and add, in its place, the word ''Statute''; remove the words ''section 401(g) of the Act'' and add, in their place, the words ''section 41110 of the Statute''.

9. In § 201.7(d), remove the word ''service'' and add, in its place, the word ''transportation''; remove the word ''domestic'' and add, in its place, the word ''interstate''.

10. In § 201.7(e), remove the words ''Regulatory Analysis Division'' and add, in their place, the words ''Special Authorities Division''.

PART 203—[AMENDED]

11. The authority citation for part 203 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 413, 415, 417.

§ 203.3 [Amended]

12. In § 203.3, remove the words ''Regulatory Analysis Division'' and add, in their place, the words ''Special Authorities Division''.

PART 204—[AMENDED]

13. The authority citation for part 204 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 417.

§ 204.1 [Amended]

14. In § 204.1 remove the word ''point'' and add, in its place, the word ''place''.

15. and 16. In § 204.2, paragraphs (a), (f), and (i) are removed; paragraphs (e), (k), (l), (m), (n), and (o) are redesignated paragraphs (d), (i), (j), (k), (l), and (m), respectively; paragraphs (b), (c), (d), (g), (h), and (j) are redesignated paragraphs (a), (b), (c), (e), (f), and (g), respectively, and revised and paragraph (h) is added to read as follows:

§ 204.2 Definitions.

* * * * *

(a) *All-cargo air carrier or section 41103 carrier* means an air carrier holding an all-cargo air transportation certificate issued under section 41103 of the Statute authorizing the transportation by aircraft in interstate air transportation of only property or only mail, or both.

(b) *Certificate authority* means authority to provide air transportation granted by the Department of Transportation or Civil Aeronautics Board in the form of a certificate of public convenience and necessity under section 41102 of the Statute or an all-cargo air transportation certificate to perform all-cargo air transportation under section 41103 of the Statute. *Certificated carriers* are those that hold certificate authority.

(c) *Citizen of the United States* means:

(1) An individual who is a citizen of the United States;

(2) A partnership each of whose partners is an individual who is a citizen of the United States; or

(3) A corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

* * * * *

(e) *Eligible place* means a place in the United States that—

(1) Was an eligible point under section 419 of the Federal Aviation Act of 1958 as in effect before October 1, 1988;

(2) Received scheduled air transportation at any time between January 1, 1990, and November 4, 1990; and

(3) Is not listed in Department of Transportation Orders 89–9–37 and 89–12–52 as a place ineligible for compensation under Subchapter II of Chapter 417 of the Statute.

(f) *Essential air service* is that air transportation which the Department has found to be essential under

Subchapter II of Chapter 417 of the Statute.

(g) *Fit* means fit, willing, and able to perform the air transportation in question properly and to conform to the provisions of the Statute and the rules, regulations and requirements issued under the Statute.

(h) *Interstate air transportation* means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—

(1) Between a place in—

(i) A State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) The District of Columbia and another place in the District of Columbia; or

(iv) A territory or possession of the United States and another place in the same territory or possession; and

(2) When any part of the transportation is by aircraft.

* * * * *

§ 204.3 [Amended]

17. In § 204.3(o), remove the word ''Act'' both times it appears and add, in its place, the word ''Statute''.

18. The heading of § 204.4 is revised to read as follows:

§ 204.4 Carriers proposing to provide essential air service.

§ 204.4 [Amended]

19. In § 204.4 introductory text, remove the word ''transportation'' and add, in its place, the word ''service''.

PART 206—[AMENDED]

20. The authority citation for part 206 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 415, 417, 419.

§ 206.1 [Amended]

21. In § 206.1, remove the words ''section 401(a) of the Act'' and add, in their place, the words ''section 41101 of the Statute''; remove the words ''section 403 of the Act'' and add, in their place, the words ''Chapter 415 of the Statute''.

§ 206.2 [Amended]

22. In § 206.2, remove the words ''the first sentence of section 405(b) of the Act'' and add, in their place, the words ''section 41902(b) of the Statute''.

§ 206.3 [Amended]

23. In § 206.3, remove the words ''sections 401(a) and 403 of the Act'' and add, in their place, the words ''section 41101 and Chapter 415 of the Statute''.

§ 206.4 [Amended]

24. In § 206.4, remove the words ''section 403 of the Act'' and add, in their place, the words ''Chapter 415 of the Statute''.

§ 206.5 [Amended]

25. In § 206.5(a) introductory text, remove the words ''section 401 of the Act'' and add, in their place, the words ''section 41102 of the Statute''; remove the words ''requirements of the Act'' and add, in their place, the words ''requirements of the Statute''; remove the words ''section 407 of the Act'' and add, in their place, the words ''section 41708 of the Statute''.

26. In § 206.5(b), remove the words ''section 403 or section 404(b) of the Act'' and add, in their place, the words ''Chapter 415 or section 41310 of the Statute''.

PART 215—[AMENDED]

27. The authority citation for part 215 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 413, 417.

PART 232—[AMENDED]

28. The authority citation for part 232 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 419.

§ 232.1 [Amended]

29. In § 232.1 (a) and (b) introductory text, remove the words ''section 405(b) of the Act'' and add, in their place, the words ''section 41902 of the Statute''.

§ 232.4 [Amended]

30. In § 232.4 (a) and (b) introductory text, remove the words ''section 405(b) of the Act'' and add, in their place, the words ''section 41902 of the Statute''.

PART 271—[AMENDED]

31. The authority citation for part 271 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 417.

§§ 271.3, 271.4, 271.5, 271.6, 271.7, 271.8 [Amended]

32. In §§ 271.3 introductory text, 271.4(a)(4)(ii), 271.4(b), 271.5(a)(2), 271.7(a), 271.8(a) introductory text, and 271.8(a)(3), remove the word ''Board'' and add, in its place, the word ''Department''.

§§ 271.3, 271.4, 271.5, 271.6, 271.8 [Amended]

33. In §§ 271.3 introductory text, 271.3(c), 271.4(a) introductory text, 271.4(a)(4), 271.5(a) introductory text, 271.6, and 271.8(c), remove the word ''transportation'' and add, in its place, the word ''service''.

§§ 271.3, 271.4, 271.5, 271.6, 271.7, 271.8 [Amended]

34. In §§ 271.3 introductory text, 271.3(a), 271.3(b), 271.3(c), 271.3(d), 271.4(a) introductory text, 271.4(a)(2)(i), 271.4(a)(4) introductory test where it appears twice, 271.4(a)(4)(ii), 271.5(a) introductory text, 271.5(a)(1), 271.5(a)(2), 271.6, 271.7(b)(1), 271.8(a)(1), 271.8(a)(2), 271.8(a)(4), and 271.8(c), remove the word ''point'' and add, in its place, the word ''place''.

35. Section 271.1 is revised to read as follows:

§ 271.1 Purpose.

This part establishes the guidelines required by 49 U.S.C. 41736 to be used by the Department in establishing the fair and reasonable amount of compensation needed to ensure the continuation of essential air service to an eligible place under 49 U.S.C. 41731 and 41734. These guidelines are intended to cover normal carrier selection cases and rate renewal cases, and not necessarily emergency carrier selection cases.

36. Section 271.2 is revised to read as follows:

§ 271.2 Definitions.

As used in this part:

Eligible place means a place in the United States that—

(1) Was an eligible point under section 419 of the Federal Aviation Act of 1958 as in effect before October 1, 1988;

(2) Received scheduled air transportation at any time between January 1, 1990, and November 4, 1990; and

(3) Is not listed in Department of Transportation Orders 89–9–37 and 89–12–52 as a place ineligible for compensation under Subchapter II of Chapter 417 of the Statute.

Essential air service is that air transportation which the Department has found to be essential under Subchapter II of Chapter 417 of the Statute.

§ 271.4 [Amended]

37. In § 271.4(a)(1)(i), remove the word ''historic'' and add, in its place, the word ''historical''.

38. Paragraph (a)(2)(ii) of § 271.4 is revised to read as follows:

§ 271.4 Carrier costs.

(a) * * *

(2) * * *

(ii) By comparing the carrier's systemwide indirect operating expenses

to those submitted by the carrier for the eligible place; or

* * * * *

39. Paragraph (c) of § 271.4 is removed.

§ 271.6 [Amended]

40. In § 271.6, remove the words ''not more than''.

41. In § 271.7, the introductory text of paragraph (b) is revised to read as follows:

§ 271.7 Subsidy payout formula.

(a) * * *

(b) While a carrier's subsidy rate will not vary even if actual revenues or costs differ from projections, the actual amount of each payment may vary depending on the following factors:

* * * * *

§ 271.7 [Amended]

42. In § 271.7(b)(3), remove the words ''§ 271.4(c) or''.

43. In § 271.7, paragraph (c) is removed; paragraph (d) is redesignated paragraph (c).

§ 271.8 [Amended]

44. In § 271.8(a)(5), correct the word ''othe'' to read ''other''.

§ 271.9 [Amended]

45. In § 271.9(a)(2), remove the words ''part 379 of this chapter'' and add, in their place, the words ''49 CFR part 21''.

46. In § 271.9(a)(3), after the number ''1973'' add the punctuation and words '', 49 CFR part 27,''.

47. In § 271.9(c), remove the words ''§§ 379.4 and 382.21'' and add, in their place, the words ''49 CFR parts 20, 21, 27 and 29, and § 382.21''.

PART 272—ESSENTIAL AIR SERVICE TO THE FREELY ASSOCIATED STATES

48. The heading of part 272 is revised to read as set forth above.

PART 272—[AMENDED]

49. The authority citation for part 272 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 402, 416, 461, 1102; sec. 221(a)(5) of the Compact of Free Association, and paragraph 5 of Article IX of the Federal Programs and Services Agreement in implementation of that Compact (Pub. L. 99–239; Pub. L. 99–658); Pub. L. 101–219.

§§ 272.1–272.10, 272.12 [Amended]

50. In §§ 272.1 where it occurs the second time, 272.2 where it occurs twice, 272.3 section title, 272.3(a), 272.4, 272.5 section title, 272.5(a), 272.5(b), 272.6 section title, 272.6(a) introductory text, 272.6(b) where it occurs the first time, 272.6(c), 272.7(a)(1), 272.7(a)(2) where it occurs twice, 272.8(a) where it occurs three times, 272.8(c), 272.8(d), 272.9 section title, 272.9(a) where it occurs twice, 272.9(b) where it occurs twice, 272.9(c), 272.9(d), 272.9(e), 272.9(f) introductory text, 272.9(f)(1), 272.9(f)(2) where it occurs twice, 272.9(g), 272.9(h) introductory text, 272.9(h)(2), 272.9(h)(3), 272.9(h)(5)(i) where it occurs twice, 272.10(a) introductory text, 272.10(a)(1), 272.10(b), 272.10(c), and 272.12 first paragraph, remove the word ''transportation'' or ''Transportation'' and add, in its place, the word ''service''.

§§ 272.1–272.3, 272.5–272.9 [Amended]

51. In §§ 272.1, 272.2 where it occurs twice, 272.3 section title, 272.3(a), 272.3(b) where it occurs twice, and 272.5(a), remove the word ''points'' and add, in its place, the word ''places''; in §§ 272.6(a) introductory text, 272.7(a) introductory text where it occurs twice, 272.7(a)(1), 272.7(a)(2), 272.8(a) where it occurs five times, 272.8(c) where it occurs twice, 272.8(d), 272.9(a) where it occurs twice, 272.9(b) where it occurs twice, 272.9(c), remove the word ''point'' and add, in its place, the word ''place''.

§§ 272.2, 272.6 [Amended]

52. In §§ 272.2 and 272.6(b), remove the initial capitalization from the words ''Essential Air''.

53. The title of § 272.4 is revised to read as follows:

§ 272.4 Applicability of procedures and policies under 49 U.S.C. 41731–42.

§ 272.4 [Amended]

54. In § 272.4, remove the words ''section 419 of the Federal Aviation Act'' and add, in their place, the words ''49 U.S.C. 41731–42.''.

§ 272.5 [Amended]

55. In § 272.5, paragraph (a) is removed; the paragraph designation ''(b)'' in paragraph (b) is removed; in formerly designated paragraph (b), remove the words ''section 419(f)'' and add, in their place, the words ''49 U.S.C. 41737''; remove the words ''§ 325.7 (except §§ 325.7(a)(2) and 325.7(b)(9));''.

§ 272.8 [Amended]

56. In § 272.8(b), remove the number ''324'' and add, in its place, the number ''271''.

PART 291—CARGO OPERATIONS IN INTERSTATE AIR TRANSPORTATION

57. The heading of part 291 is revised to read as set forth above.

58. The authority citation for part 291 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 415, 417.

59. Section 291.1 is revised to read as follows:

§ 291.1 Applicability.

This part applies to cargo operations in interstate air transportation by air carriers certificated under section 41102 or 41103 of the Statute. It also applies to applicants for an all-cargo air transportation certificate under section 41103 of the Statute.

60. Section 291.2 is revised to read as follows:

§ 291.2 Definitions.

All-cargo air transportation means the transportation by aircraft in interstate air transportation of only property or only mail, or both.

Interstate air transportation means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—

(1) Between a place in—

(i) A State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) The District of Columbia and another place in the District of Columbia; or

(iv) A territory or possession of the United States and another place in the same territory or possession; and

(2) When any part of the transportation is by aircraft.

Section 41102 carrier means an air carrier certificated under section 41102 of the Statute to transport persons, property and mail or property and mail only.

Section 41103 carrier means an air carrier holding a certificate issued under section 41103 of the Statute to provide all-cargo air transportation.

61. The title of Subpart B is revised to read as follows:

Subpart B—All-Cargo Air Transportation Certificates

62. The title of Subpart C is revised to read as follows:

Subpart C—General Rules for All-Cargo Air Transportation

63. Section 291.20 is revised to read as follows:

§ 291.20 Applicability.

The rules in this subpart apply to cargo operations in interstate air transportation performed by air carriers certificated under sections 41102 or 41103 of the Statute. Section 41103 carriers that operate passenger-only or combination aircraft under section 41102, part 298 of this chapter, or other Department authority, must comply with the rules in this subpart in connection with cargo operations in interstate air transportation, whether provided on all-cargo or combination aircraft, operated pursuant to this authority or otherwise. In case a carrier may operate a particular flight under either a section 41102 certificate or a section 41103 certificate, the flight is presumed to be operated under the carrier's section 41103 authority.

§ 291.22 [Amended]

64. In § 291.22, remove the words ''all-cargo air service in domestic cargo transportation'' and add, in their place, the words ''all-cargo air transportation''.

§ 291.23 [Amended]

65. In § 291.23(a), remove the words ''domestic cargo'' and add, in their place, the words ''interstate air''; remove the word ''Board'' and add, in its place, the word ''Department''.

66. In § 291.23(b), remove the words ''domestic cargo'' and add, in their place, the words ''interstate air''.

§ 291.24 [Amended]

67. In § 291.24, remove the words ''domestic cargo'' where they appear twice, and add, in place of the first occurrence, the words ''cargo operations in interstate air'', and add, in place of the second occurrence, the words ''interstate air''.

68. The title of Subpart D is revised to read as follows:

Subpart D—Exemptions for Cargo Operations in Interstate Air Transportation

§ 291.30 [Amended]

69. In § 291.30, remove the words ''domestic cargo'' and add, in their place, the words ''cargo operations in interstate air''.

70. Section 291.31 is revised to read as follows:

§ 291.31 Exemptions from the Statute.

(a) Each section 41102 or 41103 air carrier providing cargo operations in interstate air transportation is, with respect to such transportation, exempted from the following portions of the Statute only if and so long as it complies with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit it to conduct cargo operations in interstate air transportation:

(1) Sections 41310, 41705,

(2) Chapter 415, and

(3) Chapter 419 for all-cargo operations under section 41103.

(b) Each air carrier providing cargo operations in interstate air transportation under section 41103 of the Statute is exempted from the provisions of section 41106(a) of the Statute to the extent necessary to permit it to compete for and operate cargo charters in interstate air transportation for the Department of Defense under contracts of more than 30 days' duration.

(c) The Department of Defense is exempted from section 41106(a) of the Statute to the extent necessary to permit it to negotiate and enter into contracts of more than 30 days' duration with any section 41103 carrier for operation of cargo charters in interstate air transportation.

§§ 291.32, 291.33, 291.34 [Removed]

71. Sections 291.32, 291.33 and 291.34 are removed.

§ 291.41 [Amended]

72. In § 291.41(a), remove the words ''domestic cargo'' and add, in their place, the words ''cargo operations in interstate air''; remove the words ''section 401'' and add, in their place, the words ''section 41102''.

73. In § 291.41(b), remove the words ''domestic cargo'' and add, in their place, the words ''cargo operations in interstate air''; remove the words ''section 418'' and add, in their place, the words ''section 41103''.

74. Section 291.41(c), remove the word ''domestic cargo'' where it appears twice, and add, in their place, the words ''cargo operations in interstate air''; remove the words ''section 418'' and add, in their place, the words ''section 41103''.

75. The title of § 291.42 is revised to read as follows:

§ 291.42 Section 41103 financial and statistical reporting.

76. In § 291.42(a)(1), remove the words ''section 418'' where they appear twice, and add, in their place, the words ''section 41103''.

77. In § 291.42(b) introductory text, remove the words ''section 418'' and add, in their place, the words ''section 41103''.

78. Section 291.50 is revised to read as follows:

§ 291.50 Enforcement.

In case of any violation of any of the provisions of the Statute, or this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding pursuant to section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance therewith; or to civil penalties pursuant to the provisions of section 46301 of the Statute.

PART 294—[AMENDED]

79. The authority citation for part 294 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 417.

§ 294.1 [Amended]

80. In § 294.1, remove the words ''Federal Aviation Act'' and add, in their place, the words ''Subtitle VII of Title 49 of the United States Code (Transportation)''; remove the words ''provisions of the Act'' and add, in their place, the words ''provisions of the Statute''.

§ 294.2 [Amended]

81. In § 294.2, remove paragraph (a); paragraphs (b) through (j) are redesignated paragraphs (a) through (i).

§ 294.10 [Amended]

82. In § 294.10 introductory text, remove the word ''Act'' and add, in its place, the word ''Statute''.

83. In § 294.10(a), remove the words ''Section 402'' and add, in their place, the words ''section 41302''.

84. In § 294.10(b), remove the words ''Section 404(a)(2)'' and add, in their place, the words ''section 41501''.

85. In § 294.10(c), remove the words ''Section 404(b)'' and add, in their place, the words ''section 41310''.

§§ 294.20, 294.21, 294.22, 294.40 [Amended]

86. In §§ 294.20 introductory text, 294.20(b), 294.21(b), 294.21(e)(1), 294.22 introductory text, and 294.40, remove the words ''Regulatory Analysis Division'' and add, in their place, the words ''Special Authorities Division''.

§ 294.30 [Amended]

87. In § 294.30(c), remove the words ''section 402 of the Act''; and add, in their place, the words ''section 41302 of the Statute''; remove the words ''section 416 of the Act'' and add, in their place, the words ''section 41701 of the Statute''; remove the words ''section 402'' and add, in their place, the words ''section 41302''.

§ 294.50 [Amended]

88. In § 294.50(b), remove the words ''section 402'' and add, in their place, the words ''section 41302''.

§ 294.70 [Amended]

89. In § 294.70, remove the word ''Act'' the first two times it occurs and add, in its place, the word ''Statute''; remove the words ''sections 1002 and 1007 of the Act before the Department or'' and add, in their place, the words ''section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before''; remove the words ''section 901(a) of the Act'' and add, in their place, the words ''section 46301 of the Statute''; remove the words ''section 902(a) of the Act'' and add, in their place, the words ''section 46316 of the Statute''.

PART 296—[AMENDED]

90. The authority citation for part 296 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 417.

§ 296.1 [Amended]

91. In § 296.1, remove the words ''Federal Aviation Act'' and add, in their place, the words ''Subtitle VII of Title 49 of the United States Code (Transportation)''.

92. The title of § 296.10 is revised to read as follows:

§ 296.10 Exemption from the Statute.

§ 296.10 [Amended]

93. In § 296.10(a) introductory text, remove the words ''Title IV of the Act'' and add, in their place, the words ''the Statute''.

94. In § 296.10(a)(1), remove the words ''Subsection 403(b)(2)'' and add, in their place, the words ''Section 41510(b)''; remove the words ''section 403(b)(2)'' and add, in their place, the words ''section 41510(b)''.

95. In § 296.10(a)(2), remove the words ''Section 404(a)'' and add, in their place, the words ''Section 41702''.

96. In § 296.10(a)(3), remove the words ''Subsection 404(b)'' and add, in their place, the words ''Section 41310''.

97. In § 296.10(a)(4), remove the words ''Section 407(a)'' and ''407(e)'' and add, in their place, the words ''Section 41708'' and ''41709'', respectively.

98. In § 296.10(a)(5), remove the words ''Section 411'' and add, in their place, the words ''Section 41712''.

99. In § 296.10(a)(6), remove the words ''Section 413'' and add, in their place, the words ''Section 40102(b)''.

100. In § 296.10(a)(7), remove the words ''Section 415'' and add, in their place, the words ''Section 41711''.

101. In § 296.10(d), remove the words ''section 403 of the Act'' and add, in their place, the words ''Chapter 415 of the Statute''.

§ 296.20 [Amended]

102. In § 296.20, remove the word ''Act'' the first two times it occurs and add, in its place, the word ''Statute''; remove the words ''sections 1002 and 1007 of the Act before the Department or'' and add, in their place, the words ''section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before''; remove the words ''section 901(a) of the Act'' and add, in their place, the words ''section 46301 of the Statute''.

PART 297—[AMENDED]

103. The authority citation for part 297 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 417.

§ 297.1 [Amended]

104. In § 297.1, remove the words ''the Act'' and add, in its place, the words ''Subtitle VII of Title 49 of the United States Code (Transportation)''; remove the punctuation and word '', overseas,''.

§ 297.2 [Amended]

105. In § 297.2, remove the words ''and overseas''.

106. The title of § 297.10 is revised to read as follows:

§ 297.10 Exemption from the Statute.

§ 297.10 [Amended]

108. In § 297.10(a) introductory text, remove the words ''the Act'' and add, in their place, the words ''the Statute''.

109. In § 297.10(a)(1), remove the words ''Section 402'' and add, in their place, the words ''Section 41302''.

110. In § 297.10(a)(2), remove the words ''Section 403(a) and 403(b)(1)'' and add, in their place, the words ''Sections 41504 and 41510(a)''.

111. In § 297.10(a)(3), remove the words ''Section 403(b)(2)'' and add, in their place, the words ''Section 41510(b)''.

112. In § 297.10(a)(4), remove the words ''Subsection 404(a)(2)'' and add, in their place, the words ''Section 41501''.

113. In § 297.10(a)(5), remove the words ''or overseas'' where they appear twice; remove the word ''Act'' and add, in its place, the word ''Statute''.

114. In § 297.10(a)(6), remove the words ''Subsection 404(b)'' and add, in their place, the words ''Section 41310''.

115. In § 297.10(b), remove the words ''section 403 of the Act'' and add, in their place, the words ''Chapter 415 of the Statute''.

§ 297.12 [Amended]

116. In § 297.12(a), remove the words ''section 401, 402, 416, or 418 of the Act'' and add, in their place, the words ''section 41102, 41103, 41302, or 41701 of the Statute''.

117. In §§ 297.12(b) and 297.12(c), remove the words ''and overseas''.

§§ 297.20, 297.21, 297.24 [Amended]

118. In §§ 297.20(b) (two occurrences), 297.21, and 297.24(a), remove the words ''Regulatory Analysis Division'', and add, in their place, the words ''Special Authorities Division''.

§ 297.22 [Amended]

119. In § 297.22(e), remove the words ''section 402 of the Act'' and add, in their place, the words ''section 41302 of the Statute''.

§ 297.50 [Amended]

120. In § 297.50, remove the word ''Act'' the first two times it occurs and add, in its place, the word ''Statute''; remove the words ''sections 1002 and 1007 of the Act before the Department or'' and add, in their place, the words ''section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before''; remove the words ''section 901(a) of the Act'' and add, in their place, the words ''section 46301 of the Statute''; remove the words ''section 902(a) of the Act'' and add, in their place, the words ''section 46316 of the Statute''.

PART 298—EXEMPTIONS FOR AIR TAXI AND COMMUTER AIR CARRIER OPERATIONS

121. The heading of part 298 is revised to read as set forth above.

122. The authority citation for part 298 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 417.

§ 298.1 [Amended]

123. In § 298.1, remove the words ''Title IV of the Federal Aviation Act'' and add, in their place, the words ''Subtitle VII of Title 49 of the United States Code (Transportation)''; before the words ''air transportation'' add the words ''interstate and/or foreign''; remove footnote 1.

124. In § 298.2, paragraph (a) is removed; paragraphs (b) through (x) are redesignated paragraphs (a) through (w); newly designated paragraphs (b), (d-1), and (d–2), are revised to read as follows:

§ 298.2 Definitions.

* * * * *

(b) *Air Transportation* means interstate air transportation, foreign air transportation, or the transportation of

mail by aircraft as defined by the Statute.[1]

* * * * *

(d–1) *All-cargo air carrier or section 41103 carrier* means an air carrier holding an all-cargo air transportation certificate issued under section 41103 of the Statute authorizing the transportation by aircraft in interstate air transportation of only property or only mail, or both.

(d–2) *Certificated carrier* means an air carrier holding a certificate issued under section 41102 of the Statute.

* * * * *

§ 298.2 [Amended]

125. In newly designated § 298.2(w), remove the words ''section 401 of the Act'' and add, in their place, the words ''section 41102 of the Statute''.

§§ 298.11, 298.13 [Amended]

126. In §§ 298.11 introductory text and 298.13, remove the words ''Title IV of the Act'' and add, in their place, the words ''the Statute''.

127. In § 298.11(a), remove the words ''Section 401(a)'' and add, in their place, the words ''Section 41101''.

128. In § 298.11(b)(1), remove the words ''Section 403'' and add, in their place, the words ''Section 41504''; remove the words ''section 403 of the Act'' and add, in their place, the words ''Chapter 415''.

129. In § 298.11(c) introductory text, remove the words ''Section 404(a)'' and add, in their place, the words ''Section 41702''.

130. In § 298.11(d), remove the words ''Section 404(b)'' and add, in their place, the words ''section 41310''.

131. In § 298.11(e), remove the words ''Section 405(b)'' and add, in their place, the words ''Section 41902''.

132. In § 298.11(f), remove the words ''Sections 407(b), (c), and (d)'' and add, in their place, the words ''Section 41708''.

§ 298.21 [Amended]

133. In § 298.21, paragraph (c)(1) footnote 6 and paragraph (c)(4), remove the words ''Regulatory Analysis Division'' and add, in their place, the words ''Special Authorities Division''.

134. In § 298.21(d), after the words ''scheduled passenger service'' add the words ''as a commuter air carrier''; remove the word ''point'' and add, in its place, the word ''place''.

§ 298.36 [Amended]

135. In § 298.36(a), remove the words ''section 604 of the Act'' and add, in their place, the words ''section 44702 of the Statute''.

§ 298.62 [Amended]

136. In § 298.62(c)(1), remove the words ''section 419 of the Federal Aviation Act'' and add, in their place, the words ''section 41732 of the Statute''.

§ 298.80 [Amended]

137. In § 298.80, remove the word ''Act'' the first two times it occurs, and add, in its place, the word ''Statute''; remove the words ''sections 1002 and 1007 of the Act before the Department or'' and add, in their place, the words ''section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before''; remove the words ''section 901(a) of the Act'' and add, in their place, the words ''section 46301 of the Statute''; remove the words ''section 902(a) of the Act'' and add, in their place, the words ''section 46316 of the Statute''.

PART 300—[AMENDED]

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

Authority: 18 U.S.C. 20(b)(c); 49 U.S.C. Subtitle I and Chapters 401, 411, 413, 415, 417, 419, 449, 461, 463.

§ 300.0 [Amended]

139. In § 300.0, remove the words ''resulting from the transfer of authority under Section 1601(b)(1) of the Federal Aviation Act of 1958, as amended by the Civil Aeronautics Board Sunset Act of 1984'' and add, in their place, the words ''involving aviation economic and enforcement proceedings''.

§ 300.1 [Amended]

140. At the beginning of § 300.1, remove the words ''Under the transfer of authority under section 1601(b)(1) of the Federal Aviation Act of 1958, certain of DOT's functions'' and add, in their place, the words ''Certain of DOT's functions involving aviation economic and enforcement proceedings''.

§§ 300.2, 300.3 [Amended]

141. In §§ 300.2(c)(8) and 300.3(a)(5), remove the words ''section 419 of the Federal Aviation Act, 49 U.S.C. 1389'' and add, in their place, the words ''49 U.S.C. 41731–42.''.

§ 300.4 [Amended]

142. In § 300.4(c), remove the words ''sections 401 or 402 of the Act'' and add, in their place, the words ''49 U.S.C. 41102 and 41302''.

§ 300.10 [Amended]

143. In § 300.10, remove the words ''or the Civil Aeronautics Board'' where they appear in the title and in the text of the section.

§ 300.10a [Amended]

144. At the beginning of § 300.10a, remove the words ''Due to the transfer of authority under 1601(b)(1) of the Federal Aviation Act of 1958, the'' and add, in their place, the word ''The''.

§ 300.14 [Amended]

145. In § 300.14, remove the words ''Civil Aeronautics Board members and employees and'' in the title of the section; remove the words ''the Board or'', and ''Board member or Board employee or'' in the text of the section.

146. Section 300.20(d) is revised to read as follows:

§ 300.20 Violations.

* * * * *

(d) In the case of any violation of the provisions of this part, the violator may be subject to civil penalties under the provisions of 49 U.S.C. 46301. The violator may also be subject to a proceeding brought under 49 U.S.C. 46101 before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance with civil penalties which have been imposed.

PART 313—[AMENDED]

147. The authority citation for part 313 is revised to read as follows:

Authority: 42 U.S.C. 6362(b), 49 U.S.C. Chapter 401.

§§ 313.1, 313.2, 313.7 [Amended]

148. In §§ 313.1(c), 313.2(d) and 313.7(b), remove the word ''EPCA'' and

---

[1] ''Interstate air transportation'' is defined in section 40102(a)(25) as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft (1) between a place in (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii; (iii) the District of Columbia and another place in the District of Columbia; or (iv) a territory or possession of the United States and another place in the same territory or possession; and (2) when any part of the transportation is by aircraft. NOTE: Operations wholly within the geographic limits of a single State are not considered ''interstate air transportation'' if in those operations the carrier transports no more than a *de minimus* volume of passengers or property moving as part of a continuous journey to or from a point outside the State.

''Foreign air transportation'' is defined in section 40102(a)(23) of the Statute as the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.

Air transportation also is defined to include ''the transportation of mail by aircraft.'' Section 5402 of the Postal Reorganization Act, 39 U.S.C. 5402, authorizes the carriage of mail by air taxi operators in some circumstances under contract with the Postal Service.

add, in its place, the words ''42 U.S.C. 6362''.

§ 313.1 [Amended]

149. In § 313.1(a), remove the words ''The Energy Policy and Conservation Act (42 U.S.C. 6201 et seq., hereinafter ''EPCA'')'' and add, in their place, the words ''Chapter 77 (Energy Conservation) of Title 42 (The Public Health and Welfare);'' remove the words ''section 382 of EPCA'' and ''Section 382(b) of EPCA'' and add, in their place, the words ''42 U.S.C. 6362'' and ''42 U.S.C. 6362(b)'', respectively.

150. In § 313.1(b), remove the words ''Section 204(a) of the Federal Aviation Act of 1958, as amended (hereinafter ''Act'')'' and add, in their place, the words ''Section 40113 of Subtitle VII of Title 49 of the United States Code (Transportation) (''the Statute'')''; remove the word ''Act'' at the end of the paragraph, and add, in its place, the word ''Statute''.

§ 313.2 [Amended]

151. In § 313.2(a), remove the word ''EPCA'' and add, in its place, the words ''Chapter 77 of Title 42''; remove the words ''section 102 of the Federal Aviation Act (49 U.S.C. 1302)'' and add, in their place, the words ''section 40101 of the Statute''; remove the word ''Act'' in the last sentence and add, in its place, the word ''Statute''.

152. In § 313.2(d), remove the word ''Act'' and add, in its place, the word ''Statute''.

153. In § 313.3, paragraphs (a) and (d) are removed; paragraphs (b), (c), (e), and (f) are redesignated paragraphs (a), (b), (c), and (d); new paragraph (e) is added to read as follows:

§ 313.3 Definitions.

* * * * *

(e) *Statute* means Subtitle VII of Title 49 of the United States Code (Transportation).

154. Paragraph (b)(1) of § 313.4 is revised to read as follows:

§ 313.4 Major regulatory actions.

* * * * *

(b) * * *

(1) Tariff suspension orders under section 41509 of the Statute, emergency exemptions or temporary exemptions not exceeding 24 months under section 40109 of the Statute and other proceedings in which timely action is of the essence;

* * * * *

155. In § 313.4(c)(1), remove the word ''Act'' and add, in its place, the word ''Statute''.

§ 313.7 [Amended]

156. In § 313.7(a), remove the words ''detailed environmental negative declaration'' and add, in their place, the words ''finding of no significant impact''; remove the words ''Procedural Regulations'' and add, in their place, the word ''procedures''; remove the words ''procedures of DOT's NEPA regulations'' and add, in their place, the words ''DOT's NEPA procedures''.

PART 324—[REMOVED]

157. Part 324 is removed.

PART 325—[AMENDED]

158. The authority citation for part 325 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 417.

§§ 325.7, 325.8, 325.9 [Removed]

159. Sections 325.7, 325.8, and 325.9 are removed.

PART 372—[AMENDED]

160. The authority citation for part 372 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 413, 417.

§ 372.1 [Amended]

161. In § 372.1, remove the words ''section 401 of the Act'' and add, in their place, the words ''section 41102 of Title 49 of the United States Code (''the Statute'')''.

§ 372.2 [Amended]

162. In § 372.2 definition of *Overseas military personnel charter operator*, remove the words ''section 101(13) of the Federal Aviation Act (49 U.S.C. 1301(13))'' and add, in their place, the words ''section 40102(a)(15) of the Statute''.

163. In § 372.2, add a definition at the end of the section to read as follows:

§ 372.2 Definitions.

* * * * *

Statute when used in this chapter means Subtitle VII of Title 49 of the United States Code (Transportation).

§ 372.4 [Amended]

164. In § 372.4, remove the word ''Act'' the first two times it occurs, and add, in its place, the word ''Statute''; remove the words ''sections 1002 and 1007 of the Act before the Department or'' and add, in their place, the words ''section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before''; remove the words ''section 901(a) of the Act'' and add, in their place, the words ''section 46301 of the Statute''; remove the words ''section 902(a) of the Act'' and add, in their place, the words ''section 46316 of the Statute''.

§ 372.10 [Amended]

165. In § 372.10, remove the words ''section 401 of the Act'' and add, in their place, the words ''section 41102 of the Statute''.

§ 372.30 [Amended]

166. In § 372.30(a), remove the words ''Regulatory Analysis Division'' and add, in their place, the words ''Special Authorities Division''.

Appendix A to Part 372 [Amended]

167. In the ninth paragraph of Appendix A, which begins with the words ''This bond is effective on . . .'', remove the opening quotation marks and the words ''Regulatory Analysis Division (P–57)'' and add, in their place, the words ''Special Authorities Division (X–57)'' with no quotation marks.

PART 379—[REMOVED]

168. Part 379 is removed.

169. and 170. Part 398 is revised to read as follows:

PART 398—GUIDELINES FOR INDIVIDUAL DETERMINATIONS OF BASIC ESSENTIAL AIR SERVICE

Sec.

Authority: 49 U.S.C. Chapters 401, 417; Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223, Dec. 30, 1987).

§ 398.1 Purpose.

The purpose of this part is to establish general guidelines for the determination of basic essential air service for each eligible place under 49 U.S.C. 41731 and 41732. Procedures for the determination of the essential air service level for a place are contained in part 325 of this chapter.

§ 398.2 Number and designation of hubs.

(a) *What is a hub?* The Department considers hubs as belonging to any one of three classifications:

(1) A *large* hub is a place accounting for at least 1.00 percent of the total enplanements in the United States;

(2) A *medium* hub is a place accounting for at least 0.25 percent but less than 1.00 percent of the total enplanements in the United States; and

(3) A *small* hub is a place accounting for at least 0.05 percent but less than 0.25 percent of the total enplanements in the United States.

(b) *How many hubs?* (1) As a general matter, the Department will require service to one large or medium hub.

(2) In Alaska or when the nearest large or medium hub is more than 400 miles from the eligible place, the Department may instead require service to a small hub or nonhub.

(3) In some cases, the Department may require service to two hubs, of which at least one will be a large or medium hub. The Department will require service to two hubs if an eligible place has close commercial, geographic, and political ties to both hubs and if there is sufficient traffic from the eligible place to support two round trips a day to both hubs. If traffic is not sufficient, the Department may require one round trip a day to both hubs if the community requests such service.

(4) In no event will essential air service consist of service to more than two hubs.

(c) *Which hub?* (1) In designating hubs, the Department will weigh all of the following factors:

(i) The extent to which candidate hubs provide access to the national air transportation system;

(ii) The commercial, geographic, and political ties of candidate hubs to the eligible place;

(iii) The traffic levels to candidate hubs, as shown by traffic studies and origin and designation data;

(iv) The distance of candidate hubs from the eligible place; and

(v) The size of candidate hubs. Large size will be a positive factor, but principally as substantiating the access and community-ties factors.

(2) For Alaska, rather than requiring service to a hub, the Department may instead require that service from an eligible place be provided to a nearby focal point for traffic which, in turn, has service to a hub.

§ 398.3 Specific airports.

(a) At an eligible place, essential air service may be specified as service to a particular airport. In the case of hyphenated places, essential air service will be specified as service to more than one airport only if clearly necessary and if the multi-airport service is economically feasible and justified on the basis of traffic levels at those airports.

(b) At a hub, essential air service is not usually specified as service to a particular airport.

§ 398.4 Equipment.

(a) Except in Alaska, service will be provided by aircraft offering at least 15 passenger seats, unless:

(1) Average daily enplanements at the place did not exceed 11 passengers for any fiscal year from 1976 through 1986;

(2) The requirement would necessitate the payment of compensation in a fiscal year for service at the place when compensation would otherwise not be necessary; or

(3) The affected community agrees in writing to the use of smaller aircraft to provide service at the place.

(b) The aircraft must have at least two engines and use two pilots, unless scheduled air transportation has not been provided to the place in aircraft with at least two engines and using two pilots for at least 60 consecutive operating days at any time since October 31, 1978.

(c) The aircraft must be pressurized when the service regularly involves flights above 8,000 feet in altitude.

(d) All aircraft must meet the applicable safety standards of the Federal Aviation Administration.

(e) The aircraft must be conveniently accessible to passengers by stairs rather than over the wing.

§ 398.5 Frequency of flights.

(a) Except in Alaska, at least two round trips each weekday and two round trips each weekend.

(b) In Alaska, a level of service at least equal to that provided in 1976, or two round trips each week, whichever is greater, except that the Department and the appropriate State authority of Alaska may agree to a different level of service after consulting with the affected community.

(c) An essential air service level may be set at more than that stated in paragraphs (a) and (b) of this section if:

(1) Historical traffic data and studies of traffic-generating potential for the place indicate that more frequent service is needed to accommodate passengers and accompanying baggage with the aircraft used at that place;

(2) More flights are needed because the capacity available to the eligible place is being shared with traffic destined for an intermediate stop or for a place beyond the eligible place;

(3) More flights are needed to accommodate passengers because smaller aircraft are being used at the place;

(4) More flights are needed in order to ensure adequate connecting opportunities as provided for by § 398.7; or

(5) For Alaska, the appropriate state agency agrees that more frequent service is needed to accommodate cargo traffic with the aircraft used at the eligible place.

(d) For eligible places where traffic levels vary substantially with the season, a two-tier level of essential air service may be established with required flight frequencies changing accordingly.

§ 398.6 Seat guarantees.

(a) The number of seats guaranteed at the eligible place will be sufficient to accommodate the estimated passenger traffic at an average load factor of 60 percent, except that an average load factor of 50 percent will be used when service is provided with aircraft having fewer than 15 passenger seats.

(b) Only under unusual circumstances will an eligible place's essential air service level be set at a number of flights that will accommodate more than 40 passengers a day in each direction (a total of 80 inbound and outbound passengers). Generally, 40 passengers can be accommodated by guaranteeing 67 seats a day in each direction (a total of 134 inbound and outbound seats).

(c) The Department may guarantee an eligible place more than 67 seats a day if:

(1) The number of stops between or beyond the eligible place and the hub results in available aircraft capacity being shared with passengers at those other places;

(2) The distance between the eligible place and the designated hub requires the use of large aircraft;

(3) The eligible place has suffered an abrupt and significant reduction in its service that warrants a temporary increase in the maximum guaranteed capacity; or

(4) Other unusual circumstances warrant guaranteeing the eligible place more than 67 seats a day.

§ 398.7 Timing of flights.

To qualify as essential air service, flights must depart at reasonable times, considering the needs of passengers with connecting flights at the hub. It is the policy of the Department to consider the reasonableness of the time in view of the purpose for which the local passengers are traveling. If travel is primarily to connect with other flights at the hub, local flight times should be designed to link with those flights. If travel is primarily local (*i.e.*, to and from the hub), there should be at least one morning flight in each direction and one late-afternoon or evening flight in each direction.

§ 398.8 Number of intermediate stops.

(a) Except in Alaska, no more than one intermediate stop is permitted in

providing essential air service between the eligible place and its hub, unless otherwise agreed to with the community. In cases where an eligible place receives service to two hubs, however, more than one intermediate stop is permitted between that place and its secondary hub.

(b) In Alaska, more than one intermediate stop is permitted if required by low traffic levels at the eligible place or by the long distance between the eligible place and its hub.

(c) The Department may specify nonstop service when necessary to make the service viable.

(d) Where an eligible place normally is an intermediate stop that shares available capacity with another place, it is the policy of the Department either to require additional capacity (more flights or larger aircraft) between the eligible place and its hub or to specify some turnaround operations on that route segment.

§ 398.9 Load factor standards.

The load factor standards used in this part may be raised for individual eligible places under either of the following circumstances:

(a) The place is served by the carrier as part of a linear route; or

(b) It would be in the interest of the community, the carrier, or the general public to raise the load factor standard for that place.

§ 398.10 Overflights.

The Department considers it a violation of 49 U.S.C. 41732 and the air service guarantees provided under this part for an air carrier providing essential air service to an eligible place to overfly that place, except under one or more of the following circumstances:

(a) The carrier is not compensated for serving that place and another carrier is providing by its flights the service required by the Department's essential air service determination for that place;

(b) Circumstances beyond the carrier's control prevent it from landing at the eligible place;

(c) The flight involved is not in a market where the Department has determined air service to be essential; or

(d) The eligible place is a place in Alaska for which the Department's essential air service determination permits the overflight.

§ 398.11 Funding reductions.

(a) If, in any fiscal year, appropriations for payments to air carriers remain at or below the amounts estimated as necessary to maintain subsidy-supported essential air service at the places receiving such service, and Congress provides no statutory direction to the contrary, appropriations shall not be available for essential air service to otherwise eligible places within the 48 contiguous States and Puerto Rico that have a rate of subsidy per passenger in excess of $200.00, or are located:

(1) Less than 70 highway miles from the nearest large or medium hub airport;

(2) Less than 55 miles from the nearest small hub airport; or

(3) Less than 45 highway miles from the nearest nonhub airport that has enplaned, on certificated or commuter carriers, 100 or more passengers per day in the most recent year for which the Department has obtained complete data.

(b) The rate of subsidy per passenger shall be calculated by dividing the annual subsidy in effect as of July 1 of the prior fiscal year by the total origin-and-destination traffic during the most recent year for which the Department has obtained complete data.

PART 399—[AMENDED]

171. The authority citation for part 399 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 413, 415, 417, 419, 461.

§ 399.20, 399.38, 399.90 [Removed]

172. Sections 399.20, 399.21, 399.38, and 399.90 are removed.

§ 399.21 [Amended]

173. In § 399.21, remove the words ''section 401 of the Act'' and add, in their place, the words ''section 41102 of Title 49 of the United States Code''.

Issued in Washington DC, on August 14, 1995.

Mark L. Gerchick,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–20502 Filed 8–21–95; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25 and 602

[TD 8612]

RIN 1455–AM85

Income, Gift and Estate Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the income tax imposed under chapter 1, the estate tax imposed under chapter 11, and the gift tax imposed under chapters 12 and 14 of the Internal Revenue Code of 1986. Changes to the marital deduction provisions of the estate and gift tax chapters were made by the Technical and Miscellaneous Revenue Act of 1988. Further amendments were made by the Revenue Reconciliation Act of 1989, and the Revenue Reconciliation Act of 1990. These final regulations will provide guidance needed to comply with the changes to the marital deduction provisions of the estate and gift tax chapters.

DATES: These regulations are effective August 22, 1995.

These regulations apply to decedents dying and to gifts made after August 22, 1995.

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

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1360. The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 3 hours, depending on individual circumstances, with an estimated average of 2 hours.

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

Background

A notice of proposed rulemaking was published in the **Federal Register** (58 FR 305), on January 5, 1993, reflecting amendments made to the Code by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647) (the 1988 Act), the Revenue Reconciliation Act of 1989 (Pub. L. 101–239) (the 1989 Act), and the Revenue Reconciliation Act of 1990 (Pub. L. 101–508) (the 1990 Act). The 1988, 1989, and 1990 Acts impose restrictions on the allowance of the estate and gift tax marital deduction where the surviving spouse (in the case of a transfer at death) or the donee spouse (in the case of a lifetime transfer) is not a citizen of the United States. In addition, the gift tax annual exclusion allowable in the case of a transfer to a

noncitizen spouse was increased to $100,000. The statutory amendments also changed the tax rate and the amount of the unified credit applicable in the case of the estate of a decedent nonresident not a citizen of the United States (nonresident alien). The IRS received written comments on the proposed regulations and, on April 2, 1993, held a public hearing on the regulations.

After consideration of the written and oral comments received, § 20.2056A–2(d) of the proposed regulations, which provides additional requirements for qualification as a qualified domestic trust to ensure the collection of the section 2056A estate tax, was substantially modified. In view of these substantial modifications, § 20.2056A–2(d) has been reissued as proposed and temporary regulations in order to afford the public a further opportunity to comment on these security arrangements. See the proposed rules and the rules portion of this issue of the **Federal Register**, respectively. The balance of the proposed regulations are revised and adopted as final regulations by this Treasury decision.

The following is a discussion of the more significant comments received (other than those comments pertaining to § 20.2056A–2(d) of the proposed regulations) and the reasons for accepting or rejecting those comments in the final regulations.

A. Section 1.1015–5 Increased Basis for Gift Tax Paid in the Case of Gifts Made After December 31, 1976

This section of the proposed regulations has been revised to better conform to the existing regulations and to clarify the determination of the amount of the gift tax paid in situations where the donor's unified credit is applied against the gift tax liability.

B. Section 20.2056A–1 Restrictions on Allowance of Marital Deduction if Surviving Spouse is Not a United States Citizen

Under section 2056(d)(4), if the surviving spouse becomes a citizen of the United States before the day on which the estate tax return is filed, property passing from the decedent to the surviving spouse either outright or in trust need not be transferred to a qualified domestic trust (QDOT) (or the trust need not be reformed to qualify as a QDOT) in order to qualify for the estate tax marital deduction. It is possible that the naturalization process may not be completed before the due date, including extensions, for filing the estate tax return. Comments suggested that if the surviving spouse has filed an application for naturalization within a reasonable time after the decedent's death, then any late filing of the return pending the outcome of the citizenship process should be treated as due to reasonable cause for purposes of section 6651 (imposing penalties for failure to file returns and failure to pay tax). This suggestion was not adopted because the existence of reasonable cause for late-filing and late-payment should be determined on a case by case basis applying well-established standards as prescribed under current law.

In response to comments, the discussion in § 20.2056A–1(c) of the proposed regulations, regarding the special rule for estate and gift tax treaties, was expanded. Section 7815(d)(14) of the 1989 Act added a special rule under which the statutory amendments affecting the estate and gift tax marital deduction do not apply when the decedent or donor is not a United States citizen or resident and is a resident of a country with which the United States has an estate, gift or inheritance tax treaty, to the extent such statutory amendments would be inconsistent with the treaty provisions. The final regulations provide that under this special rule, the estate may choose either the statutory deduction under section 2056A or the marital deduction, exemption, or credit allowed under the treaty. See H. Rep. No. 247, 101 Cong. 1st Sess. 1435, n. 99 (September 20, 1989). Thus, the estate may not avail itself of both the marital benefit under the treaty and the marital deduction under the QDOT provisions of the Code with respect to the remainder of the marital property that is not otherwise deductible under the treaty. These regulations do not conflict with existing treaties.

C. Section 20.2056A–2 Requirements for Qualified Domestic Trust

Under § 20.2056A–2(a) of the proposed regulations, in order to qualify as a QDOT, a trust must be created and maintained under the laws of the United States or any state or the District of Columbia. Several commentators suggested that this requirement should be deleted because it places an additional burden on nonresident aliens with only limited contacts with the United States. This comment was not adopted. The ability of the Internal Revenue Service to collect the section 2056A estate tax is adequately protected only if the trust has a sufficient nexus with the United States. However, the final regulations delete the requirement that the trust be created under the laws of the United States. In lieu of that requirement, the final regulations provide that the trust may be established by a document executed under the laws of either the United States or a foreign jurisdiction, such as under a foreign will or trust, provided that the document directs that the laws of a particular state of the United States or the District of Columbia govern the administration of the trust, and that direction is effective under the applicable local law. The final regulations also clarify that a trust is ''maintained'' in the United States for purposes of this provision if the records of the trust (or copies thereof) are kept in the United States.

Section 20.2056A–2(a) of the proposed regulations also provided that in order to qualify as a QDOT, a trust must constitute an ''explicit trust'' as defined in § 301.7701–4(a) of the regulations. The final regulations change this reference to an ''ordinary trust'', since that is the term referred to in § 301.7701–4(a). Some commentators raised the concern that if property transferred to a QDOT includes an active trade or business, the trust may be classified as an association taxable as a corporation under § 301.7701–2 and, therefore, will not qualify as a QDOT. In response to those comments, the final regulations provide that a trust will not fail to be treated as an ordinary trust under § 301.7701–4(a) for purposes of section 2056A solely because of the nature of the assets transferred to that trust.

D. Section 20.2056A–3 QDOT Election

Comments were received recommending that the protective election rules contained in § 20.2056A–3(c) of the proposed regulations be expanded to permit protective elections with respect to a broader range of controversies affecting the availability of the marital deduction for property passing to or for the benefit of a noncitizen spouse and the time period during which such controversies must arise. In response to these comments, the availability of a protective election has been revised to cover additional situations. The final regulations provide that a protective election may be made only if a bona fide issue is presented, the resolution of which is uncertain at the time the federal estate tax return is filed. The bona fide issue must concern the residency or citizenship of the decedent, the citizenship of the surviving spouse, whether an asset is includible in the decedent's gross estate, or the amount or nature of the property the surviving spouse is entitled to receive. Conforming changes have been made to the protective assignment rules

of the proposed regulations to reflect these amendments.

Under § 20.2056A–3(b) of the proposed regulations, partial QDOT elections were not permitted. However, the proposed regulations provide that if a trust is severed in accordance with the rules under section 2056(b)(7), a QDOT election may be made for each separate trust. A comment was received stating that the phrase ''for each separate trust'' implies that if there are two or more trusts after division, an election must be made for each trust. The final regulations clarify that upon severance of a trust, a QDOT election may be made for any one or more of the severed trusts.

E. Section 20.2056A–4 Procedures for Conforming Marital Trusts and Nonmarital Transfers to the Requirements of a Qualified Domestic Trust

A comment was received pointing out that the proposed regulations did not specify the time by which a nonjudicial reformation must be completed. Accordingly, the final regulations provide that a nonjudicial reformation must be completed by the time prescribed (including extensions) for filing the decedent's estate tax return. This result is consistent with section 2056(d)(5)(A), which provides that absent a judicial reformation the determination of the qualification of a trust as a QDOT is made as of the date the return is filed.

Section 20.2056A–4(a)(2) of the proposed regulations provide that a trust, as reformed, must be effective under local law and irrevocable. A trust in which the surviving spouse has an income interest and an inter vivos general power of appointment is, in effect, revocable and could, therefore, fail to qualify under the proposed regulations. Accordingly, the final regulations have been amended to provide that the trust as reformed may be revocable by the spouse, or otherwise be subject to the spouse's general power of appointment, provided that there is no power exercisable by any person to amend the trust during the continued period of its existence such that it would no longer qualify as a QDOT. Thus, for example, any distributions made pursuant to the spouse's exercise of a power to appoint must be subject to the requirement that the U.S. Trustee withhold the section 2056A estate tax.

The final regulations provide that prior to the time a judicial reformation of the trust is completed, the trustee is responsible for filing the Form 706–QDT, paying any section 2056A estate tax that becomes due, and filing the annual report if such a report is required. In addition, failure to comply with these requirements may cause the trust to be subject to the anti-abuse rule under § 20.2056A–2T(d)(1)(iv). A claim for refund may be filed to recover any section 2056A estate tax paid by the trust if the judicial reformation is terminated prior to completion. In addition, if the judicial reformation is terminated prior to completion, the trustee of the trust is liable for the additional estate tax on the decedent's estate that becomes due at the time of the termination due to the trust's failure to comply with section 2056A.

Comments were received criticizing the rule contained in § 20.2056A–4(b)(5) of the proposed regulations, that a transfer of property by the surviving spouse or the decedent's executor to a QDOT created by the spouse pursuant to section 2056(d)(2)(B) is treated as a transfer from the decedent solely for purposes of section 2056(d)(2)(A). For all other purposes, e.g., income, gift, estate, generation-skipping transfer tax and section 1491, the proposed regulations provide that the property is treated as passing from the surviving spouse to the trust. The comments suggested that although section 2056A(b)(15) provides for tax exempt reimbursement to the spouse of income taxes paid by the spouse with respect to trust items, that provision should not be interpreted as acknowledging that all QDOTs created by the surviving spouse or by the decedent's executor are grantor trusts for income tax purposes.

The final regulations retain the rule that the surviving spouse is treated as the transferor of the property transferred to a QDOT pursuant to section 2056(d)(2)(B). It is believed that this treatment is consistent with Congressional intent, as evidenced by section 2056A(b)(15). However, because of the potentially unanticipated result in the case of completed transfers to trusts by the surviving spouse where the spouse retains an income interest, § 25.2702–1(c) of the regulations is amended by this document to provide that property assigned or transferred to a QDOT by the surviving spouse, where the surviving spouse retains an income interest in the transferred property, is not subject to the special valuation rules of section 2702. See § 25.2702–1(c)(8). The final regulations also provide that the surviving spouse is not considered the transferor of property to a QDOT if the transfer by the spouse constitutes a transfer that satisfies the requirements of section 2518(c)(3).

Section 20.2056A–4(b) of the proposed regulations provide that if property is transferred or assigned to a QDOT by the surviving spouse pursuant to section 2056(d)(2)(B), the QDOT need not be a trust that would otherwise qualify for a marital deduction under section 2056(a). A question has been raised whether this rule applies regardless of whether the trust was created by the decedent during life or by will, by the surviving spouse, or by the decedent's executor. Accordingly, the final regulations clarify that if the spouse transfers property to a QDOT pursuant to section 2056(d)(2)(B), the transferee trust need not (with one exception) be in a form necessary to qualify for a marital deduction under section 2056(a) regardless of whether the trust is created by the decedent, the surviving spouse or the decedent's executor. However, the final regulations provide that, once funded, 100 percent of the transferee trust must consist of assets that qualify for the marital deduction under the Code. This rule is necessary to avoid complicated tracing issues under section 2056A(b)(1). Therefore, if the decedent also bequeaths property to the trust under his will, the trust will need to conform to the marital trust requirements in order that all of the trust property qualifies for the marital deduction under section 2056(a).

Section 20.2056A–4(b)(3) of the proposed regulations provide that only assets passing from the decedent to the spouse that are included in the decedent's gross estate may be transferred or assigned to a QDOT. The language of the proposed regulations could be viewed as providing that assets originally owned at any time by the surviving spouse cannot be assigned to the QDOT, even if those assets in fact are included in the decedent's gross estate. For example, a question has been raised whether property owned by the surviving spouse that was transferred to the decedent and then subsequently bequeathed to the surviving spouse could be transferred or assigned to a QDOT. In order to address this concern, the final regulations have been clarified to provide that the surviving spouse may transfer or assign to the QDOT any property included in the decedent's gross estate and passing to the spouse at death. However, the spouse may not transfer property owned by the spouse at the time of the decedent's death, in lieu of property passing from the decedent.

In response to comments, the final regulations specifically address the transfer or assignment of property to a QDOT in the case of the death or incompetency of the surviving spouse. The final regulations provide that the transfer or assignment of property to a

QDOT may be made by either the surviving spouse, the surviving spouse's legal representative (if the surviving spouse is incompetent), or by the surviving spouse's executor (if the surviving spouse subsequently dies).

Comments were received suggesting that the method adopted in § 20.2056A–4(c)(4) of the proposed regulations for computing the ''corpus portion'' of a nonassignable annuity payment be revised. The comments suggested that the corpus portion of each payment should be computed based on that portion of each payment excluded from the spouse's income under section 72. Alternatively, it was suggested that the determination of the corpus portion should be keyed to the threshold for imposition of the section 4980A excise tax on excess distributions (generally amounts distributed in excess of $150,000). Both of these suggestions were rejected. The methodology in the regulations is designed to realistically approximate the portion of each payment representing income and corpus based on the present value of the benefit, the expected term of the annuity, and the assumed rate of return. On the other hand, basing the determination on the extent to which each payment is included in the spouse's income would produce arbitrary and unrealistic results. For example, in the case of a noncontributory qualified plan, the entire payment will be includible in gross income and thus no portion would be allocated to corpus. Similarly, under the section 4980A approach, the first $150,000 of payments will be arbitrarily allocated to income regardless of the amount of the total annual payment. It is believed that neither of these methods provides an accurate or realistic measure of the income or corpus portion of each payment.

Guidance was requested regarding whether an individual retirement account (IRA) described in section 408(a) is a nonassignable annuity or other arrangement eligible for the procedures contained in § 20.2056A–4(c). In general, individual retirement accounts under section 408(a) are assignable but individual retirement annuities under section 408(b) are not assignable (and thus, are eligible for the special procedures described in § 20.2056A–4(c)). However, if an individual retirement account is assigned to a trust with respect to which the surviving spouse is not treated as the owner under section 671 et seq. (providing rules for the treatment of grantor trusts), then the entire account balance is treated as a distribution to the spouse includible in the spouse's gross income under section 408(d) in the taxable year in which the assignment is made.

In view of this significant tax burden attendant to the assignment of an individual retirement account to a nongrantor trust, the final regulations allow the spouse to treat the individual retirement account as nonassignable for purposes of § 20.2056A–4(c) and thus, eligible for the procedures contained in that section. However, if the spouse does assign the individual retirement account to a trust pursuant to §§ 20.2056A–2(b)(2) and 20.2056A–4(b) (either a grantor trust or a nongrantor trust), then § 20.2056A–4(b)(7) (providing that an assignment of an assignable annuity or other arrangement to a trust is treated as a transfer of the property to a QDOT regardless of the method of payment actually elected) will apply. Thus, under the final regulations, if the individual retirement account is assignable, the spouse has the option of either assigning the individual retirement account to a QDOT, or using the procedures contained in § 20.2056A–4(c).

In response to comments, § 20.2056A–4(c) of the proposed regulations has been modified to provide that if the financial circumstances of the spouse are such that an amount equal to all or a part of the corpus portion of a nonassignable annuity payment received by the spouse would be eligible for a hardship exemption (as defined in § 20.2056A–5(c)), if paid from a QDOT, then all or a corresponding part of the payment will be exempt from the rollover or the tax payment requirements, depending upon which option is selected by the spouse.

In response to comments, the agreements required under § 20.2056A–4(c) of the proposed regulations (pertaining to the spouse's undertaking to roll over nonassignable annuity payments to a QDOT or pay a section 2056A estate tax on each payment) have been revised. In the final regulations, both forms of agreements provide that in the event of a failure to timely file the Form 706–QDT or a failure to either (1) timely pay the section 2056A estate tax on the corpus portion of the annuity payment, or (2) timely roll over the corpus portion to a QDOT, the surviving spouse may make an application for relief under § 301.9100–1 of the Procedure and Administration Regulations, from the consequences of the failures. This is in lieu of the automatic acceleration of the balance of the section 2056A estate tax as provided in the proposed regulations.

Under the proposed regulations, both forms of agreements provided that the surviving spouse must agree, at the request of the District Director (or the Assistant Commissioner (International) in the case of a surviving spouse of a nonresident alien decedent or a surviving spouse of a United States citizen who died domiciled outside the United States) to enter into a security agreement to secure the spouse's undertakings under the agreement. Comments were received objecting to the open-ended nature of this security requirement. In response to these comments, the final regulations have been amended so that this provision applies only in those cases in which the plan or arrangement from which the annuity will be paid is established and administered by a person or entity that is located outside of the United States. In the case of these foreign plans, additional security requirements may be necessary to assure collectibility of the section 2056A estate tax.

F. Section 20.2056A–5 Imposition of the Section 2056A Estate Tax

Comments were received regarding § 20.2056A–5(c)(2) of the proposed regulations which provides that items will be characterized as ''income'' for purposes of section 2056A(b)(3)(A) and section 2056A(c)(2) based on applicable state law, regardless of the terms of the instrument. Commentators maintained that this provision created unnecessary complexity in the administration of QDOTs in jurisdictions with no statutes governing allocation of receipts between principal and income. The commentators suggested that if local law or statutory law is silent regarding treatment of an item, the allocation of the item should be based on the terms of the governing instrument with certain specified exclusions (such as capital gains). This suggestion was not adopted, in part, because the grant of this broad discretion would not be consistent with the legislative history underlying section 2056A(b)(1). Instead, the final regulations provide that when local law is silent, reference will be made to general principles of law (such as, for example, the Uniform Principal and Income Act) and that these principles will override any provisions to the contrary in the governing instrument. In addition, the final regulations provide that for purposes of section 2056A(b)(3)(A), ''income'' does not include (in addition to the exclusion for capital gains) items constituting income in respect of a decedent under section 691, regardless of the characterization thereof under local law, except to the extent provided in administrative guidance published by the Service. The IRS added this exclusion because it is

believed that local law may inappropriately characterize certain items of IRD (income in respect of a decedent) as income, contrary to the purposes of section 2056A, and it was determined that exceptions to this rule of exclusion should be made on a case by case basis. However, in cases where a QDOT is designated by the decedent as a beneficiary of a pension or profit sharing plan described in section 401(a), or an individual retirement account or annuity described in section 408, the proceeds of which are payable to the QDOT in the form of an annuity, the final regulations provide that any payments received by the QDOT may be allocated between income and corpus using the method prescribed under § 20.2056A–4(c) for determining the corpus and income portion of an annuity payment.

A comment was received recommending revision of § 20.2056A–5(c)(3) of the proposed regulations to specifically authorize nontaxable reimbursement to the spouse for income taxes for which the spouse is liable if the spouse receives a lump sum distribution from a qualified plan and assigns the distribution to the QDOT. In response to this comment, the final regulations have been modified to provide that amounts paid from the QDOT to reimburse the spouse for such income taxes are not subject to the section 2056A estate tax. In addition, the provisions for nontaxable distributions to the spouse contained in section 2056A(b)(15) (regarding reimbursement for certain income taxes paid by the spouse) have been incorporated into § 20.2056A–5(c)(3) of the final regulations to ensure completeness. With respect to the amount of the reimbursement, the final regulations provide that the amount of tax eligible for reimbursement is the difference between the income tax liability of the spouse (as reported on the spouse's income tax return) and the spouse's income tax liability determined as if the item had not been included in the spouse's gross income in the applicable taxable year.

In response to comments, the definition of a hardship distribution has been expanded. Under the final regulations, a distribution to the spouse is deemed made on account of hardship if the distribution is made to the spouse from the QDOT in response to an immediate and substantial financial need relating to the spouse's health, maintenance, education or support, or the health, education, maintenance or support of any person that the surviving spouse is legally obligated to support.

One comment suggested modifying the regulations to provide that in making a distribution, the trustee may rely upon a statement by the surviving spouse claiming hardship under the regulations. It was decided that this change not be made. Trustees must frequently make decisions concerning whether a distribution is warranted under a particular standard under the trust document. It is believed that a QDOT presents no special circumstances that would justify a deviation from normal fiduciary practices under these circumstances.

Language has been added to the final regulations to further clarify what assets are considered ''reasonably available'' to the surviving spouse for purposes of determining whether the assets must be liquidated before a hardship distribution may be made. The final regulations provide that assets such as closely held business interests, real estate and tangible personalty are not considered assets that are reasonably available.

G. Section 20.2056A–6 Amount of Tax

Under the proposed regulations, in computing the estate tax imposed under section 2056A(b)(1)(B) on the death of the surviving spouse, a credit for state or foreign death taxes under sections 2011 or 2014, respectively, is allowable only if the state or foreign jurisdiction actually imposed additional tax on the QDOT at the time of the taxable event (i.e., only if the jurisdiction had a statutory provision similar in effect to section 2056A). A comment was received that this limitation was inappropriate and was not consistent with the legislative history underlying section 2056A(b)(10). See 136 Cong. Rec. H7147 (daily ed. Aug. 3, 1990). In response to this comment, the final regulations provide that if state or foreign death taxes are paid by the surviving spouse's estate with respect to the QDOT (because the QDOT is included in the surviving spouse's gross estate for state or foreign tax purposes), the taxes are creditable to the extent provided in sections 2011 or 2014 in computing the section 2056A estate tax. In addition, the final regulations provide that state or foreign death taxes previously paid by the decedent/transferor's estate are also creditable within the section 2011 or 2014 framework. A new example has been added to the final regulations to illustrate this application of the state death tax credit.

H. Section 20.2056A–7 Allowance of Prior Transfer Credit Under Section 2013

The proposed regulations provided that the ''first limitation'' in determining the allowable section 2013 credit with respect to the section 2056A estate tax imposed on the spouse's death is deemed to be the section 2056A estate tax imposed. This approach was adopted to avoid certain computational and interpretative problems that would be presented if the methodology described in section 2013(b) and § 20.2013–2 was used. The final regulations retain this approach.

In order to ensure consistency, the final regulations adopt two additional modifications to the section 2013 regime in computing the allowable credit with respect to the section 2056A estate tax. Under § 20.2013–4(a), the amount of the transfer, based on which the ''first limitation'' and ''second limitation'' are determined, is the value at which the property was included in the transferor's gross estate. Further, under § 20.2013–4(b), the amount of the transfer is reduced by any estate and inheritance taxes payable out of the property transferred to the transferee decedent. However, under § 20.2056A–7, the ''first limitation'' is the amount of the section 2056A estate tax determined based on the value of the QDOT on the death of the transferee spouse and any corpus distributions made prior to that time that were subject to tax under section 2056A(b)(1)(A). This same value should be used in determining the ''second limitation.'' Further, since the entire value of the QDOT, unreduced by the amount of the section 2056A estate tax, is included in the transferee spouse's gross estate (see section 2053(c)(1)(B)), this amount (unreduced by the section 2056A estate tax) should be used in determining the ''second limitation''. Otherwise, the credit mechanism will not adequately avoid the double taxation the credit was intended to alleviate in the case of property which has appreciated since the death of the first decedent, and would confer an unintended windfall in the case of property which has declined in value. Accordingly, the final regulations provide that, for purposes of the ''second limitation'' as described in section 2013(c), the value of the property transferred to the decedent is the value of the QDOT on the date of death of the surviving spouse. This value is not reduced by the section 2056A estate tax imposed at the time of the spouse's death. An example has been added illustrating the computation of the prior transfer credit.

I. Section 20.2056A–8 Special Rules for Joint Property

Several comments were received concerning the proper interpretation of sections 2056(d)(1) and 2056(d)(2) where joint property passing to a spouse is transferred by the spouse to a QDOT. Section 2056(d)(1) provides that if the surviving spouse is not a citizen then, except as provided in section 2056(d)(2), no marital deduction is allowed and section 2040(a), rather than section 2040(b), applies in determining the extent to which the joint property is included in the decedent's gross estate. Section 2056(d)(2) provides, inter alia, that section 2056(d)(1) does not apply to any property passing to a QDOT. Comments have been received suggesting that under a literal interpretation of these provisions, if joint property includible in the decedent's gross estate is transferred by the surviving spouse to a QDOT, the provisions of section 2056(d)(1)(B) do not apply and, therefore, section 2040(b) (and not section 2040(a)) would apply to determine the extent to which the joint property is included in the gross estate. The final regulations do not adopt this comment. The statutory provisions should be interpreted as providing that section 2040(a) applies in all events in determining the extent to which spousal joint property is includible in the gross estate, regardless of whether the spouse transfers the property to a QDOT. Under section 2056(d)(2), any property so includible will qualify for the marital deduction if it is timely transferred to a QDOT. The result of the suggested interpretation would be circular in effect: the gross estate would be continually reduced by transfers of property to the QDOT and the size of the gross estate would affect the amount that would need to be transferred to the QDOT so that no net estate tax would be due.

Commentators requested clarification of the ''consideration furnished'' rule contained in § 20.2056A–8(a)(2) of the proposed regulations has been clarified. This rule provided that for purposes of applying section 2040(a), in determining the amount of consideration furnished by the surviving spouse, any consideration furnished by the decedent with respect to the acquisition of the property before July 14, 1988, is treated as consideration furnished by the surviving spouse to the extent that the consideration was treated as a gift to the spouse under section 2511, or to the extent that the decedent elected to treat the transfer as a gift to the spouse under section 2515 (prior to repeal by the Economic Recovery Tax Act of 1981). Under the proposed regulations, this special rule was applicable only if the donor spouse predeceased the donee spouse. The final regulations clarify that in cases where the donee spouse predeceases the donor spouse, the amount treated as a gift to the decedent/donee spouse on the creation of the tenancy is *not* treated as the donee spouse's contribution towards the acquisition of the property for purposes of section 2040(a). Thus, if the donee spouse provided no other consideration towards the acquisition of the property, no part of the property would be includible in the decedent/donee's gross estate under section 2040(a). No inference is intended as to the applicable rules in effect prior to the effective date of these regulations. Two additional examples have been added to further illustrate the application of the joint property rules.

J. Section 20.2056A–9 Designated Filer

In response to comments, the time period accorded the U.S. Trustee for submitting Schedule B, Form 706–QDT, to the Designated Filer has been increased from thirty to sixty days prior to the due date for filing the return. Also, in response to comments, the rule in the proposed regulations that the Designated Filer may allocate the section 2056A estate tax among the various QDOTs in the Designated Filer's discretion has been modified. The final regulations provide that the tax due from each QDOT is allocated on a pro rata basis (based on the ratio of the amount of the respective taxable events in each QDOT to the amount of all such taxable events), unless a different allocation is required in the governing instrument or under local law.

In response to comments suggesting that the regulations provide guidance in the event that the Designated Filer ceases to qualify as a U.S. Trustee, the final regulations provide that unless the decedent has provided for a successor Designated Filer, if the Designated Filer ceases to qualify as a U.S. Trustee or otherwise becomes unable to serve as the Designated Filer, the remaining trustees are required to select a qualifying successor Designated Filer (who is also a U.S. Trustee) prior to the due date for the filing of the next Form 706–QDT. Failure to select a successor Designated Filer will result in the application of section 2056A(b)(2)(C).

K. Section 20.2056A–11 Filing Requirements and Payment of Section 2056A Estate Tax

Comments were received suggesting that in the case of multiple QDOTs with respect to the same decedent, the extent of the trustees' liability for the amount of the section 2056A estate tax should be clarified. It was suggested that a trustee should be personally liable for the amount of any section 2056A estate tax imposed on any taxable event with respect to that trustee's trust, but should not be personally liable for tax imposed on the other trusts with respect to that decedent. In response to this comment, the trustee liability provisions of § 20.2056A–11(d) of the proposed regulations have been modified. In the case of multiple QDOTs with respect to the same decedent, each trustee of a QDOT is personally liable for the amount of the tax imposed on any taxable event with respect to that trustee's QDOT and a trustee is not personally liable for tax imposed with respect to taxable events involving QDOTs of which that person is not a trustee. However, the assets of a trust would be subject to collection for the section 2056A estate tax due with respect to any other trust with respect to that decedent.

L. Section 25.2523(i)–1 Disallowance of Gift Tax Marital Deduction When Spouse Is Not a United States Citizen

Comments were received concerning the conclusion in example 4 under § 25.2523(i)–1(d) of the proposed regulations. This example involves the transfer in trust to a noncitizen spouse with income payable to the spouse for life and remainder to the children of the donor. As proposed, the example concludes that the transfer is eligible for the $100,000 annual exclusion based on the rationale that if the donee were a citizen, the gift would qualify for a marital deduction if a qualified terminable interest property election were made. In response to the comments on this issue, the IRS has concluded that this result is not consistent with the statute because the gift does not qualify for the marital deduction ''but for'' the application of section 2523(i)(1). See section 2523(i)(2). The gift only qualifies for the marital deduction if an election is made under section 2523(f)(4) to treat the trust as qualified terminable interest property. This election is not available if the donee spouse is not a United States citizen. The statutory requirement that only gifts that would have qualified for the marital deduction but for section 2523(i) are eligible for the increased annual exclusion is intended to ensure that only gifts that would be includible in the spouse's gross estate at death (if the spouse were a United States citizen) qualify for the increased exclusion. This was not the case in the example as proposed and, as a result, the

conclusion in the example has been changed.

M. Section 25.2523(i)–2 Treatment of Spousal Joint Tenancy Property Where One Spouse Is Not a United States Citizen

Section 2523(i)(3) provides that the rules of section 2515 prior to repeal by the Economic Recovery Tax Act of 1981 shall generally apply if the donee spouse is not a United States citizen. The provision is effective for gifts made after July 14, 1988.

In response to comments, the final regulations under § 25.2523(i)–2(b) have been expanded to more fully describe the consequences of terminations of tenancies by the entirety and joint tenancies after July 13, 1988, where the donee spouse is not a United States citizen. As prescribed by statute, the gift tax consequences of the termination are governed by the principles of section 2515 (prior to repeal) and the regulations thereunder. Generally, under these rules, the gift tax consequences were dependent on whether or not the creation of the tenancy was initially treated as a gift under section 2515(a). Questions have been raised regarding the gift tax treatment for terminations of tenancies that were created after 1981 and before July 14, 1988. During this time period, section 2515 was not applicable and the generic principles of section 2511 governed the gift tax treatment of the creation of a joint tenancy or tenancy by the entirety. Accordingly, in response to these comments, the final regulations provide that, in the case of a termination on or after July 14, 1988, of a tenancy by the entirety or a joint tenancy that was created after 1981 and before July 14, 1988, if the creation of the tenancy was treated as a gift to the noncitizen donee spouse under section 2511 then, upon termination of the tenancy, the value of the property treated as a gift upon creation of the tenancy is treated as consideration originally belonging to the noncitizen spouse and never acquired by the noncitizen spouse from the donor spouse. With respect to the termination on or after July 14, 1988, of a tenancy by the entirety or joint tenancy created after 1954 and before 1982 (during which period section 2515 applied), the consequences of termination are determined under the rules of section 2515 and the regulations thereunder.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

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

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, 25, and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. § 1.1015–5 is amended as follows:

a. The headings for paragraphs (a) and (b) are revised.

b. Paragraph (c) is redesignated as paragraph (d).

c. A new paragraph (c) is added.

The revisions and additions read as follows:

§ 1.1015–5 Increased basis for gift tax paid.

(a) *General rule in the case of gifts made on or before December 31, 1976.* * * *

* * * * *

(b) Amount of gift tax paid with respect to gifts made on or before December 31, 1976. * * *

* * * * *

(c) *Special rule for increased basis for gift tax paid in the case of gifts made after December 31, 1976*—(1) *In general.* With respect to gifts made after December 31, 1976 (other than gifts between spouses described in section 1015(e)), the increase in basis for gift tax paid is determined under section 1015(d)(6). Under section 1015(d)(6)(A), the increase in basis with respect to gift tax paid is limited to the amount (not in excess of the amount of gift tax paid) that bears the same ratio to the amount of gift tax paid as the net appreciation in value of the gift bears to the amount of the gift.

(2) *Amount of gift.* In general, for purposes of section 1015(d)(6)(A)(ii), the amount of the gift is determined in conformance with the provisions of paragraph (b) of this section. Thus, the amount of the gift is the amount included with respect to the gift in determining (for purposes of section 2503(a)) the total amount of gifts made during the calendar year (or calendar quarter in the case of a gift made on or before December 31, 1981), reduced by the amount of any annual exclusion allowable with respect to the gift under section 2503(b), and any deductions allowed with respect to the gift under section 2522 (relating to the charitable deduction) and section 2523 (relating to the marital deduction). Where more than one gift of a present interest in property is made to the same donee during a calendar year, the annual exclusion shall apply to the earliest of such gifts in point of time.

(3) *Amount of gift tax paid with respect to the gift.* In general, for purposes of section 1015(d)(6), the amount of gift tax paid with respect to the gift is determined in conformance with the provisions of paragraph (b) of this section. Where more than one gift is made by the donor in a calendar year (or quarter in the case of gifts made on or before December 31, 1981), the amount of gift tax paid with respect to any specific gift made during that period is the amount which bears the same ratio to the total gift tax paid for that period (determined after reduction for any gift tax unified credit available under section 2505) as the amount of the gift (computed as described in paragraph (c)(2) of this section) bears to the total taxable gifts for the period.

(4) *Qualified domestic trusts.* For purposes of section 1015(d)(6), in the case of a qualified domestic trust (QDOT) described in section 2056A(a),

any distribution during the noncitizen surviving spouse's lifetime with respect to which a tax is imposed under section 2056A(b)(1)(A) is treated as a transfer by gift, and any estate tax paid on the distribution under section 2056A(b)(1)(A) is treated as a gift tax. The rules under this paragraph apply in determining the extent to which the basis in the assets distributed is increased by the tax imposed under section 2056A(b)(1)(A).

(5) *Examples.* Application of the provisions of this paragraph (c) may be illustrated by the following examples:

Example 1. (i) Prior to 1995, *X* exhausts *X*'s gift tax unified credit available under section 2505. In 1995, *X* makes a gift to *X*'s child *Y*, of a parcel of real estate having a fair market value of $100,000. *X*'s adjusted basis in the real estate immediately before making the gift was $70,000. Also in 1995, *X* makes a gift to *X*'s child *Z*, of a painting having a fair market value of $70,000. *X* timely files a gift tax return for 1995 and pays gift tax in the amount of $55,500, computed as follows:

Value of real estate transferred to *Y*	$100,000	
Less: Annual exclusion	10,000	
Included amount of gift (C)		$90,000
Value of painting transferred to *Z*	$70,000	
Less: annual exclusion	10,000	
Included amount of gift		60,000
Total included gifts (D)		$150,000
Total gift tax liability for 1995 gifts (B)		$55,500

(ii) The gift tax paid with respect to the real estate transferred to *Y*, is determined as follows:

$$\frac{\$90{,}000\ (C)}{\$150{,}000\ (D)} \times \$55{,}500\ (B) = \$33{,}300$$

(iii) (A) The amount by which *Y*'s basis in the real property is increased is determined as follows:

$$\frac{\$30{,}000\ (\text{net appreciation})}{\$90{,}000\ (\text{amount of gift})} \times \$33{,}300 = \$11{,}100$$

(B) *Y*'s basis in the real property is $70,000 plus $11,100, or $81,100. If × had not exhausted any of *X*'s unified credit, no gift tax would have been paid and, as a result, *Y*'s basis would not be increased.

Example 2. (i) *X* dies in 1995. *X*'s spouse, *Y*, is not a United States citizen. In order to obtain the marital deduction for property passing to *X*'s spouse, *X* established a QDOT in *X*'s will. In 1996, the trustee of the QDOT makes a distribution of principal from the QDOT in the form of shares of stock having a fair market value of $70,000 on the date of distribution. The trustee's basis in the stock (determined under section 1014) is $50,000. An estate tax is imposed on the distribution under section 2056A(b)(1)(A) in the amount $38,500, and is paid. *Y*'s basis in the shares of stock is increased by a portion of the section 2056A estate tax paid determined as follows:

$$\frac{\$20{,}000\ (\text{net appreciation})}{\$70{,}000\ (\text{distribution})} \times \$38{,}500\ (\text{section 2056A estate tax}) = \$11{,}000$$

(ii) *Y*'s basis in the stock is $50,000 plus $11,000, or $61,000.

(6) *Effective date.* The provisions of this paragraph (c) are effective for gifts made after August 22, 1995.

* * * * *

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

Par. 3. The authority citation for part 20 continues to read in part as follows:

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

Par. 4. In § 20.2056–0, the table of contents is amended by:

a. Redesignating the entries for §§ 20.2056(d)–1 and 20.2056(d)–2 as §§ 20.2056(d)–2 and 20.2056(d)–3, respectively.

b. Adding a new entry for § 20.2056(d)–1 to read as follows:

§ 20.2056–0 Table of contents

* * * * *

§ 20.2056(d)–1 Marital deduction; special rules for marital deduction if surviving spouse is not a United States citizen.

* * * * *

Par. 5. Sections 20.2056(d)–1 and 20.2056(d)–2 are redesignated as §§ 20.2056(d)–2 and 20.2056(d)–3, respectively, and new § 20.2056(d)–1 is added to read as follows:

§ 20.2056(d)–1 Marital deduction; special rules for marital deduction if surviving spouse is not a United States citizen.

Rules pertaining to the application of section 2056(d), including certain transition rules, are contained in §§ 20.2056A–1 through 20.2056A–13.

Par. 6. Sections 20.2056A–0 through 20.2056A–13 are added to read as follows:

§ 20.2056A–0 Table of contents.

This section lists the captions that appear in the final regulations under §§ 20.2056A–1 through 20.2056A–13.

§ 20.2056A–1 Restrictions on allowance of marital deduction if surviving spouse is not a United States citizen.

(a) General rule.

(b) Marital deduction allowed if resident spouse becomes citizen.

(c) Special rules in the case of certain transfers subject to estate and gift tax treaties.

§ 20.2056A–2 Requirements for qualified domestic trust.

(a) In general.

(b) Qualified marital interest requirements.

(1) Property passing to QDOT.

(2) Property passing outright to spouse.

(3) Property passing under a nontransferable plan or arrangement.

(c) Statutory requirements.

(d) [Reserved]

§ 20.2056A–3 QDOT election.

(a) General rule.

(b) No partial elections.

(c) Protective elections.

(d) Manner of election.

§ 20.2056A–4 Procedures for conforming marital trusts and nontrust marital transfers to the requirements of a qualified domestic trust.

(a) Marital trusts.

(1) In general.

(2) Judicial reformations.

(3) Tolling of statutory assessment period.

(b) Nontrust marital transfers.

(1) In general.

§ 20.2056A–1 Restrictions on allowance of marital deduction if surviving spouse is not a United States citizen.

(a) *General rule.* Subject to the special rules provided in section 7815(d)(14) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239; 103 Stat. 2106), in the case of a decedent dying after November 10, 1988, the federal estate tax marital deduction is not allowed for property passing to or for the benefit of a surviving spouse who is not a United States citizen at the date of the decedent's death (whether or not the surviving spouse is a resident of the United States) unless—

(1) The property passes from the decedent to (or pursuant to)—

(i) A qualified domestic trust (QDOT) described in section 2056A and § 20.2056A–2;

(ii) A trust that, although not meeting all of the requirements for a QDOT, is reformed after the decedent's death to meet the requirements of a QDOT (see § 20.2056A–4(a));

(iii) The surviving spouse not in trust (e.g., by outright bequest or devise, by operation of law, or pursuant to the terms of an annuity or other similar plan or arrangement) and, prior to the date that the estate tax return is filed and on or before the last date prescribed by law that the QDOT election may be made (no more than one year after the time prescribed by law, including extensions, for filing the return), the surviving spouse either actually transfers the property to a QDOT or irrevocably assigns the property to a QDOT (see § 20.2056A–4(b)); or

(iv) A plan or other arrangement that would have qualified for the marital deduction but for section 2056(d)(1)(A), and whose payments are not assignable or transferable to a QDOT, if the requirements of § 20.2056A–4(c) are met; and

(2) The executor makes a timely QDOT election under § 20.2056A–3.

(b) *Marital deduction allowed if resident spouse becomes citizen.* For purposes of section 2056(d)(1) and paragraph (a) of this section, the surviving spouse is treated as a citizen of the United States at the date of the decedent's death if the requirements of section 2056(d)(4) are satisfied. For purposes of section 2056(d)(4)(A) and notwithstanding § 20.2056A–3(a), a return filed prior to the due date (including extensions) is considered filed on the last date that the return is required to be filed (including extensions), and a late return filed at any time after the due date is considered filed on the date that it is actually filed. A surviving spouse is a resident only if the spouse is a resident under chapter 11 of the Internal Revenue Code. See § 20.0–1(b)(1). The status of the spouse as a resident under section 7701(b) is not relevant to this determination except to the extent that the income tax residency of the spouse is pertinent in applying § 20.0–1(b)(1).

(c) *Special rules in the case of certain transfers subject to estate and gift tax treaties.* Under section 7815(d)(14) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2106) certain special rules apply in the case of transfers governed by certain estate and gift tax treaties to which the United States is a party. In the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, the amendments made by section 5033 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, 102 Stat. 3342) do not apply to the extent such amendments would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions. Under this rule, the estate may choose either the statutory deduction under section 2056A or the marital deduction allowed under the treaty. Thus, the estate may not avail itself of both the marital deduction under the treaty and the marital deduction under the QDOT provisions of section 2056A and chapter 11 of the Internal Revenue Code with respect to the remainder of the marital property that is not deductible under the treaty.

§ 20.2056A–2 Requirements for qualified domestic trust.

(a) *In general.* In order to qualify as a qualified domestic trust (QDOT), the requirements of paragraphs (b) and (c) of this section, and the requirements of § 20.2056A–2T(d), must be satisfied. The executor of the decedent's estate and the U.S. Trustee shall establish in such manner as may be prescribed by the Commissioner on the estate tax return and applicable instructions that these requirements have been satisfied or are being complied with. In order to constitute a QDOT, the trust must be maintained under the laws of a state of the United States or the District of Columbia, and the administration of the trust must be governed by the laws of a particular state of the United States or the District of Columbia. For purposes of this paragraph (a), a trust is maintained under the laws of a state of the United States or the District of Columbia if the records of the trust (or copies thereof) are kept in that state (or the District of Columbia). The trust may be established pursuant to an instrument executed under either the laws of a state of the United States or the District of Columbia or pursuant to an instrument executed under the laws of a foreign jurisdiction, such as a foreign will or trust, provided that such foreign instrument designates the law of a particular state of the United States or the District of Columbia as governing the administration of the trust, and such designation is effective under the law of the designated jurisdiction. In addition, the trust must constitute an ordinary trust, as defined in § 301.7701–4(a) of this chapter, and not any other type of entity. For purposes of this paragraph, a trust will not fail to constitute an ordinary trust solely because of the nature of the assets transferred to that trust, regardless of its classification under §§ 301.7701–2 through 301.7701–4 of this chapter.

(b) *Qualified marital interest requirements*—(1) *Property passing to QDOT.* If property passes from a decedent to a QDOT, the trust must qualify for the federal estate tax marital deduction under section 2056(b)(5) (life estate with power of appointment), section 2056(b)(7) (qualified terminable interest property, including joint and survivor annuities under section 2056(b)(7)(C)), or section 2056(b)(8) (surviving spouse is the only noncharitable beneficiary of a charitable remainder trust), or meet the requirements of an estate trust as defined in § 20.2056(c)–2(b)(1)(i) through (iii).

(2) *Property passing outright to spouse.* If property does not pass from a decedent to a QDOT, but passes to a noncitizen surviving spouse in a form that meets the requirements for a marital deduction without regard to section 2056(d)(1)(A), and that is not described in paragraph (b)(1) of this section, the surviving spouse must either actually transfer the property, or irrevocably assign the property, to a trust (whether created by the decedent, the decedent's executor or by the surviving spouse) that meets the requirements of paragraph (c) of this section and the requirements of § 20.2056A–2T(d) (pertaining, respectively, to statutory requirements and regulatory requirements imposed to ensure collection of tax) prior to the filing of the estate tax return for the decedent's estate and on or before the last date prescribed by law that the QDOT election may be made (see § 20.2056A–3(a)).

(3) *Property passing under a nontransferable plan or arrangement.* If property does not pass from a decedent to a QDOT, but passes under a plan or other arrangement that meets the requirements for a marital deduction without regard to section 2056(d)(1)(A) and whose payments are not assignable or transferable (see § 20.2056A–4(c)), the property is treated as meeting the requirements of this section, and the requirements of § 20.2056A–2T(d), if the requirements of § 20.2056A–4(c) are satisfied. In addition, where an annuity or similar arrangement is described above except that it is assignable or transferable, see § 20.2056A–4(b)(7).

(c) *Statutory requirements.* The requirements of section 2056A(a)(1)(A) and (B) must be satisfied. For purposes of that section, a domestic corporation is a corporation that is created or organized under the laws of the United States or under the laws of any state of the United States or the District of Columbia. The trustee required under that section is referred to herein as the ''U.S. Trustee''.

(d) [Reserved]

§ 20.2056A–3 QDOT election.

(a) *General rule.* Subject to the time period prescribed in section 2056A(d), the election to treat a trust as a QDOT must be made on the last federal estate tax return filed before the due date (including extensions of time to file actually granted) or, if a timely return is not filed, on the first federal estate tax return filed after the due date. The election, once made, is irrevocable.

(b) *No partial elections.* An election to treat a trust as a QDOT may not be made with respect to a specific portion of an entire trust that would otherwise qualify for the marital deduction but for the application of section 2056(d). However, if the trust is actually severed in accordance with the applicable requirements of § 20.2056(b)–7(b)(2)(ii) prior to the due date for the election, a QDOT election may be made for any one or more of the severed trusts.

(c) *Protective elections.* A protective election may be made to treat a trust as a QDOT only if at the time the federal estate tax return is filed, the executor of the decedent's estate reasonably believes that there is a bona fide issue that concerns either the residency or citizenship of the decedent, the citizenship of the surviving spouse, whether an asset is includible in the decedent's gross estate, or the amount or nature of the property the surviving spouse is entitled to receive. For example, if at the time the federal estate tax return is filed either the estate is involved in a bona fide will contest, there is uncertainty regarding the inclusion in the gross estate of an asset which, if includible, would be eligible for the QDOT election, or there is uncertainty regarding the status of the decedent as a resident alien or a nonresident alien for estate tax purposes, or a similar uncertainty regarding the citizenship status of the surviving spouse, a protective QDOT election may be made. The protective election is in addition to, and is not in lieu of, the requirements set forth in § 20.2056A–4. The protective QDOT election must be made on a written statement signed by the executor under penalties of perjury and must be attached to the return described in paragraph (a) of this section, and must identify the specific assets to which the protective election refers and the specific basis for the protective election. However, the protective election may otherwise be defined by means of a formula (such as the minimum amount necessary to reduce the estate tax to zero). Once made, the protective election is irrevocable. For example, if a protective election is made because a bona fide question exists as to the includibility of an asset in the decedent's gross estate and it is later finally determined that the asset is so includible, the protective election becomes effective with respect to the asset and cannot thereafter be revoked.

(d) *Manner of election.* The QDOT election under paragraph (a) of this section is made in the form and manner set forth in the decedent's estate tax return, including applicable instructions.

§ 20.2056A–4 Procedures for conforming marital trusts and nontrust marital transfers to the requirements of a qualified domestic trust.

(a) *Marital trusts*—(1) *In general.* If an interest in property passes from the decedent to a trust for the benefit of a noncitizen surviving spouse and if the trust otherwise qualifies for a marital deduction but for the provisions of section 2056(d)(1)(A), the property interest is treated as passing to the surviving spouse in a QDOT if the trust is reformed, either in accordance with the terms of the decedent's will or trust agreement or pursuant to a judicial proceeding, to meet the requirements of a QDOT. For this purpose, the requirements of a QDOT include all of the applicable requirements set forth in § 20.2056A–2, and the requirements of § 20.2056A–2T(d). A reformation pursuant to the terms of the decedent's will or trust instrument must be completed by the time prescribed (including extensions) for filing the decedent's estate tax return. For purposes of this paragraph (a), a return filed prior to the due date (including extensions) is considered filed on the last date that the return is required to be filed (including extensions), and a late return filed at any time after the due date is considered filed on the date that it is actually filed.

(2) *Judicial reformations.* In general, a reformation pursuant to a judicial proceeding is permitted under this section if the reformation is commenced on or before the due date (determined with regard to extensions actually granted) for filing the return of tax imposed by chapter 11 of the Internal Revenue Code, regardless of the date that the return is actually filed. The reformation (either pursuant to a judicial proceeding or otherwise) must result in a trust that is effective under local law. The reformed trust may be revocable by the spouse, or otherwise be subject to the spouse's general power of appointment, provided that no person (including the spouse) has the power to amend the trust during the continued existence of the trust such that it would no longer qualify as a QDOT. Prior to the time that the judicial reformation is completed, the trust must be treated as a QDOT. Thus, the trustee of the trust is responsible for filing the Form 706–QDT, paying any section 2056A estate tax that becomes due, and filing the annual statement required under § 20.2056A–2T(d)(3), if applicable. Failure to comply with these requirements may cause the trust to be subject to the anti-abuse rule under § 20.2056A–2T(d)(1)(iv). In addition, if the judicial reformation is terminated prior to the time that the reformation is completed, the estate of the decedent is required to pay the increased estate tax imposed on the decedent's estate (plus interest and any applicable penalties) that becomes due at the time of such termination as a result of the failure of the trust to comply with section 2056(d). See section 6511 as to applicable time periods for credit or refund of tax.

(3) *Tolling of statutory assessment period.* For the tolling of the statute of limitations in the case of a judicial reformation, see section 2056(d)(5)(B).

(b) *Nontrust marital transfers*—(1) *In general.* Under section 2056(d)(2)(B), if an interest in property passes outright from a decedent to a noncitizen surviving spouse either by testamentary bequest or devise, by operation of law, or pursuant to an annuity or other similar plan or arrangement, and such property interest otherwise qualifies for a marital deduction except that it does not pass in a QDOT, solely for purposes of section 2056(d)(2)(A), the property is treated as passing to the surviving spouse in a QDOT if the property interest is either actually transferred to a QDOT before the estate tax return is filed and on or before the last date prescribed by law that the QDOT election may be made, or is assigned to a QDOT under an enforceable and irrevocable written assignment made on or before the date on which the return is filed and on or before the last date prescribed by law that the QDOT election may be made. The transfer or assignment of property to a QDOT may be made by the surviving spouse, the surviving spouse's legal representative (if the surviving spouse is incompetent), or the personal representative of the surviving spouse's estate (if the surviving spouse has died). The QDOT to which the property is transferred may be created by the decedent (during life or by will), by the surviving spouse, or by the executor. For purposes of section 2056(d)(2)(B), if no property other than the property passing to the surviving spouse from the decedent is transferred to the QDOT, the transferee QDOT need not be in a form such that the property transferred to the QDOT would qualify for a marital deduction under section 2056(a). However, if other property is or has been transferred to the QDOT, 100 percent of the value of the transferee QDOT must qualify for the marital deduction under section 2056. For example, if the decedent, a U.S. citizen, bequeaths property to a trust that does not satisfy the requirements of section 2056(b)(5) or (7), or to a trust that does not qualify as an estate trust under § 20.2056(c)–2(b)(1)(i)–(iii), that trust cannot be used as a transferee QDOT by the surviving spouse, since after that trust is fully funded the portion of the value of the trust attributable to property bequeathed to the trust by the decedent will not qualify for a marital deduction under section 2056. Similarly, if the decedent, a nonresident not a citizen of the United States, bequeaths foreign situs assets to a trust created under his will, the surviving spouse may not transfer U.S. situs assets passing to the spouse outside of the will to that trust under this paragraph. See § 20.2056A–3(c) with respect to protective elections. See § 20.2056A–3(a) with respect to the time limitations for making the QDOT election.

(2) *Form of transfer or assignment.* A transfer or assignment of property to a QDOT must be in writing and otherwise be in accordance with all local law requirements for such assignment or transfer. The transfer or assignment may be of a specific asset or a group of assets, or a fractional share of either, or may be of a pecuniary amount. A transfer or assignment of less than an entire interest in an asset or a group of assets may be expressed by means of a formula (such as the minimum amount necessary to reduce the estate tax to zero). In the case of a transfer, a copy of the trust instrument evidencing the transfer must be submitted with the decedent's estate tax return. In the case of an assignment, a copy of the assignment must be submitted with the decedent's estate tax return.

(3) *Assets eligible for transfer or assignment.* If a transfer or assignment is of a specific asset or group of assets, only assets included in the decedent's gross estate and passing from the decedent to the spouse (or the proceeds from the sale, exchange or conversion of such assets) may be transferred or assigned to the QDOT. The noncitizen surviving spouse may not transfer or assign to the QDOT property owned by the surviving spouse at the time of the decedent's death in lieu of property included in the decedent's gross estate that passes to the spouse (or in lieu of the proceeds from the sale, exchange or conversion of such includible assets). In addition, if only a portion of an asset is includible in the decedent's gross estate, the spouse may only transfer the portion that is so includible to the transferee trust under this paragraph (b)(3).

(4) *Pecuniary assignment—special rules.* If the assignment is expressed in the form of a pecuniary amount (such as a fixed dollar amount or a formula designed to reduce the decedent's estate tax to zero), the assignment must specify that—

(i) Assets actually transferred to the QDOT in satisfaction of the assignment have an aggregate fair market value on the date of actual transfer to the QDOT amounting to no less than the amount of the pecuniary transfer or assignment; or

(ii) The assets actually transferred to the QDOT be fairly representative of appreciation or depreciation in the value of all property available for transfer to the QDOT between the valuation date and the date of actual transfer to the QDOT, if the assignment is to be satisfied by accounting for the assets on the basis of their fair market value as of some date before the date of actual transfer to the QDOT.

(5) *Transfer tax treatment of transfer or assignment.* Property assigned or transferred to a QDOT pursuant to section 2056(d)(2)(B) is treated as passing from the decedent to a QDOT solely for purposes of section 2056(d)(2)(A). For all other purposes (e.g., income, gift, estate, generation-skipping transfer tax, and section 1491 excise tax), the surviving spouse is treated as the transferor of the property to the QDOT. However, the spouse is not considered the transferor of property to a QDOT if the transfer by the spouse constitutes a transfer that satisfies the requirements of section 2518(c)(3). For a special exception to the valuation rules of section 2702 in the case of a transfer by the surviving spouse to a QDOT, see § 25.2702–1(c)(8) of this chapter.

(6) *Period for completion of transfer.* Property irrevocably assigned but not actually transferred to the QDOT before the estate tax return is filed must actually be conveyed and transferred to the QDOT under applicable local law before the administration of the decedent's estate is completed. If there is no administration of the decedent's estate (because for example, none of the decedent's assets are subject to probate under local law), the conveyance must be made on or before the date that is one year after the due date (including extensions) for filing the decedent's estate tax return. If an actual transfer to the QDOT is not timely made, section 2056(d)(1)(A) applies and the marital deduction is not allowed. The executor of the decedent's estate (or other authorized legal representative) may request a private letter ruling from the Internal Revenue Service requesting an extension of the time for completing the conveyance or waiving the actual conveyance under specified circumstances under § 301.9100–1(a) of this chapter.

(7) *Retirement accounts and annuities*—(i) *In general.* An assignment otherwise in compliance with this paragraph (b) of rights under annuities or other similar arrangements that are assignable and thus, are not described in paragraph (c) of this section, is treated as a transfer of such property to the QDOT regardless of the method of payment actually elected under such annuity or plan.

(ii) *Individual retirement annuities.* Individual retirement annuities described in section 408(b) are not assignable pursuant to section 408(b)(1) and thus, do not come within the purview of this paragraph (b)(7). See the procedures provided in paragraph (c) of this section.

(iii) *Individual retirement accounts.* Unless the terms of the account provide otherwise, individual retirement accounts described in section 408(a) are assignable and subject to the provisions of this paragraph (b)(7). However, under paragraph (c) of this section, the surviving spouse may treat an individual retirement account as nonassignable and, therefore, eligible for the procedures in paragraph (c) of this section if the spouse timely complies with the requirements in paragraph (c) of this section.

(iv) *Other effects of assignment.* The provisions of this paragraph (b)(7) apply solely for purposes of qualifying the annuity or account under the rules of § 20.2056A–2 and this section. See, for example, section 408(d) and 4980A regarding the consequences of an assignment for purposes other than this paragraph (b)(7).

(8) *Protective assignment.* A protective assignment of property to a QDOT may be made only if, at the time the federal estate tax return is filed, the executor of the decedent's estate reasonably believes that there is a bona fide issue that concerns either the residency or citizenship of the decedent, the citizenship of the surviving spouse, whether all or a portion of an asset is includible in the decedent's gross estate, or the amount or nature of the property the surviving spouse is entitled to receive. For example, if at the time the federal estate tax return is filed, either the estate is involved in a bona fide will contest, there is uncertainty regarding the inclusion in the gross estate of an asset which, if includible, would be eligible for the QDOT election, or there is uncertainty regarding the status of the decedent as a resident alien or a nonresident alien for estate tax purposes, or a similar uncertainty regarding the citizenship status of the surviving spouse, a protective assignment may be made. The protective assignment must be made on a written statement signed by the assignor under penalties of perjury on or before the date prescribed under paragraph (b)(1) of this section, and must identify the specific assets to which the assignment refers and the specific basis for the protective assignment. However, the protective assignment may otherwise be defined by means of a formula (such as the minimum amount necessary to reduce the estate tax to zero). Once made, the protective assignment cannot be revoked. For example, if a protective assignment is made because a bona fide question exists as to the includibility of an asset in the decedent's gross estate and it is later finally determined that the asset is so includible, the protective assignment becomes effective with respect to the asset and cannot thereafter be revoked. Protective assignments are, in all events, subject to paragraph (b)(6) of this section. A copy of the protective assignment must be submitted with the decedent's estate tax return.

(c) *Nonassignable annuities and other arrangements*—(1) *Definition and general rule.* For purposes of this section, a *nonassignable annuity or other arrangement* means a plan, annuity, or other arrangement (whether qualified or not qualified under part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code) that qualifies for the marital deduction but for section 2056(d)(1)(A), and whose payments are not assignable or transferable to the QDOT under either federal law (see, e.g., section 401(a)(13)), state law, foreign law, or the terms of the plan or arrangement itself. For purposes of this paragraph (c), a surviving spouse's interest as beneficiary of an individual retirement annuity described in section 408(b) is a nonassignable annuity or other arrangement. See section 408(b)(1). For purposes of this paragraph (c), a surviving spouse's interest as beneficiary of an individual retirement account described in section 408(a), although assignable under that section, is considered to be a nonassignable annuity or other arrangement eligible for the procedures contained in this paragraph (c), at the option of the surviving spouse, if the requirements of this paragraph are otherwise satisfied. See paragraph (b)(7) of this section if the spouse elects to treat the account as assignable. In the case of a plan, annuity, or other arrangement which is not assignable or transferable (or is treated as such), the property passing under the plan from the decedent is treated as meeting the requirements § 20.2056A–2, and the requirements of § 20.2056A–2T(d) (pertaining,

respectively, to general requirements, qualified marital interest requirements, statutory requirements, and requirements to ensure collection of the tax) if the requirements of either paragraph (c)(2) or (3) of this section are satisfied. Thus, the property will be treated as passing in the form of a QDOT, notwithstanding that the spouse does not irrevocably transfer or assign the annuity or other payment to the QDOT as provided in paragraph (b) of this section. The Commissioner will prescribe by administrative guidance the extent, if any, to which the provisions of this paragraph (c) apply to a rollover from a qualified trust to an eligible retirement plan within the meaning of section 402(c) or a distribution from an individual retirement account or an individual retirement annuity that is paid into an individual retirement account or an individual retirement annuity within the meaning of section 408(d)(3).

(2) *Agreement to remit section 2056A estate tax on corpus portion of each annuity payment.* The requirements of this paragraph (c)(2) are satisfied if—

(i) The noncitizen surviving spouse agrees to pay on an annual basis, as described in paragraph (c)(6)(i) of this section, the estate tax imposed under section 2056A(b)(1) due on the corpus portion, as defined in paragraph (c)(4) of this section, of each nonassignable annuity or other payment received under the plan or arrangement. However, for purposes of this paragraph (c)(2), if the financial circumstances of the spouse are such that an amount equal to all or a portion of the corpus portion of a nonassignable annuity payment received by the spouse would be subject to a hardship exemption (as defined in § 20.2056A–5(c)) if paid from a QDOT, then all or a corresponding part of the corpus portion will be exempt from the tax payment requirement under this paragraph (c)(2);

(ii) The executor of the decedent's estate files with the estate tax return the Information Statement described in paragraph (c)(5) of this section;

(iii) The executor files with the estate tax return the Agreement To Pay Section 2056A Estate Tax described in paragraph (c)(6) of this section; and

(iv) The executor makes the election under § 20.2056A–3 with respect to the nonassignable annuity or other payment.

(3) *Agreement to roll over corpus portion of annuity payment to QDOT.* The requirements of this paragraph (c)(3) are satisfied if—

(i) The noncitizen surviving spouse agrees to roll over and transfer, within the time prescribed under paragraph (c)(7)(i) of this section, the corpus portion of each annuity payment to a QDOT, whether the QDOT is created by the decedent's will, the executor of the decedent's estate, or the surviving spouse. However, for purposes of this section, if the financial circumstances of the spouse are such that an amount equal to all or a portion of the corpus portion of a nonassignable annuity payment received by the spouse would be subject to a hardship exemption (as defined in § 20.2056A–5(c)) if paid from a QDOT, then all or a corresponding part of the corpus portion will be exempt from the rollover requirement under this paragraph (c)(3);

(ii) A QDOT for the benefit of the surviving spouse is established prior to the date that the estate tax return is filed and on or prior to the last date prescribed by law that the QDOT election may be made;

(iii) The executor of the decedent's estate files with the estate tax return the Information Statement described in paragraph (c)(5) of this section;

(iv) The executor files with the estate tax return the Agreement To Roll Over Annuity Payments described in paragraph (c)(7) of this section; and

(v) The executor makes the election under § 20.2056A–3 with respect to the nonassignable annuity or other payment. See § 20.2056A–5(c)(3)(iv)(A), regarding distributions from the QDOT reimbursing the spouse for income taxes paid (either by actual payment or withholding) by the spouse with respect to amounts transferred to the QDOT pursuant to this paragraph (c)(3).

(4) *Determination of corpus portion*—(i) *Corpus portion.* For purposes of this paragraph (c), the corpus portion of each nonassignable annuity or other payment is the corpus amount of the annual payment divided by the total annual payment.

(ii) *Corpus amount.* (A) The corpus amount of the annual payment is determined in accordance with the following formula:

$$\text{Corpus Amount} = \frac{\text{Total present value of annuity or other payment}}{\text{Expected annuity term}}$$

(B) The total present value of the annuity or other payment is the present value of the nonassignable annuity or other payment as of the date of the decedent's death, determined in accordance with the interest rates and mortality data prescribed by section 7520. The expected annuity term is the number of years that would be required for the scheduled payments to exhaust a hypothetical fund equal to the present value of the scheduled payments. This is determined by first dividing the total present value of the payments by the annual payment. From the quotient so obtained, the expected annuity term is derived by identifying the term of years that corresponds to the annuity factor equal to the quotient. This is determined by using column 1 of Table B, for the applicable interest rate, contained in Publication 1457, *Alpha Volume*. A copy of this publication may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. If the quotient obtained falls between two terms, the longer term is used.

(5) *Information Statement*—(i) *In general.* In order for a nonassignable annuity or other payment described in this paragraph (c) to qualify under either paragraph (c) (2) or (3) of this section, the Information Statement described in paragraph (c)(5)(ii) of this section must be filed with the decedent's federal estate tax return. The Information Statement must be signed under penalties of perjury by both the executor of the decedent's estate and by the surviving spouse of the decedent (or by the legal representative of the surviving spouse if the surviving spouse is legally incompetent to sign the statement). The Statement must contain all of the information prescribed by this paragraph (c)(5).

(ii) *Annuity source information*—(A) *Employment-related annuity.* If the nonassignable annuity or other payment is employment-related, the following information must be provided—

(*1*) The name and address of the employer;

(*2*) The date of retirement or other separation from employment of the decedent;

(*3*) The name and address of the pension fund, insurance company, or other obligor that is paying the annuity (or similar payment); and

(*4*) The identification number, if any, that the obligor has assigned to the annuity or other payment.

(B) *Annuity not employment-related.* If the nonassignable annuity or other payment is not employment-related, the following information must be provided—

(*1*) The name and address of the person or entity paying the nonassignable annuity or other payment;

(*2*) The date of acquisition of the nonassignable annuity contract by the decedent or by the decedent and the surviving spouse; and

(*3*) The identification number, if any, that the obligor has assigned to the nonassignable annuity or other payment.

(iii) *The total annuity amount payable each year.* The total amount payable annually under the nonassignable annuity or other arrangement, including a description of whether the annuity is payable monthly, quarterly, or at some other interval, and a description of any scheduled changes in the annuity payout amount.

(iv) *The duration of the annuity.* A description of the term of the nonassignable annuity or other payment in years, if it is determined by a term certain, and the name, address, and birthdate of any measuring life if the nonassignable annuity or other payment is determined by one or more lives.

(v) *The market interest rate under section 7520.* The applicable interest rate as determined under section 7520.

(vi) *Determination of corpus portion of each payment (in accordance with paragraph (c)(4) of this section).* The following items are required in order to determine the corpus portion of each payment—

(A) The present value of the nonassignable annuity or other payment as of the decedent's death;

(B) The expected annuity term;

(C) The corpus amount of the annual annuity payments (paragraph (c)(5)(vi)(A) of this section divided by paragraph (c)(5)(vi)(B) of this section); and

(D) The corpus portion of the annual payments (paragraph (c)(5)(vi)(C) of this section divided by the total amount payable annually).

(vii) *Recipient QDOT.* In the case of an agreement to rollover under paragraph (c)(3) of this section, the following must be provided—

(A) The name and address of the trustee of the QDOT who is the U.S. Trustee; and

(B) The name and taxpayer identification number of the QDOT.

(viii) *Certification statement.* The executor of the decedent's estate and the surviving spouse of the decedent (or the legal representative of the surviving spouse if the surviving spouse is legally incompetent to so certify) must each sign a Certification Statement as follows:

Under penalties of perjury, I hereby certify that, to the best of my knowledge and belief, the information reported in this Information Statement is true, correct and complete.

(6) *Agreement to pay section 2056A estate tax—(i) Payment of section 2056A estate tax.* The tax payable under paragraph (c)(2) of this section is payable on an annual basis, commencing in the calendar year following the calendar year of the receipt by the surviving spouse of the spouse's first annuity payment. Form 706QDT and the payment are due on April 15th of each year following the calendar year in which an annuity payment is received except that, in the year of the deceased spouse's death, the Form 706–QDT and the payment are not due prior to the due date, including extensions, for filing the deceased spouse's estate tax return, or if no return is filed, no later than 9 months from the date of the deceased spouse's death; and, in the year of the surviving spouse's death, the Form 706–QDT must be filed and the payment made no later than 9 months from the date of the surviving spouse's death. See § 20.2056A–11 for extensions of time for filing Form 706–QDT and paying the section 2056A estate tax.

(ii) *Agreement.* In order for a nonassignable annuity or other payment described in this paragraph (c) to qualify under paragraph (c)(2) of this section, the executor of the decedent's estate must file with the estate tax return the following Agreement To Pay Section 2056A Estate Tax, which must be signed by the surviving spouse of the decedent (or by the surviving spouse's legal representative if the surviving spouse is legally incompetent to sign the agreement):

I [*name*] hereby agree that I will report all annuity payments received under the [*name of plan or arrangement*] on Form 706–QDT for the calendar year and remit, on an annual basis, to the Internal Revenue Service the estate tax that is imposed under section 2056A(b)(1) of the Internal Revenue Code on the corpus portion of each annuity payment (as defined in § 20.2056A–4(c)(4) of the Estate Tax Regulations) received under the plan during the calendar year. I also agree that Form 706–QDT is to be filed no later than April 15th of the year following the calendar year in which any annuity payments are received except that: in the case of annuity payments received in the year of my spouse's death, Form 706–QDT and the payment shall not be due prior to the due date, including extensions, for filing my spouse's estate tax return or, if no return is filed, no later than 9 months from the date of my spouse's death (except if I am granted an extension of time to file Form 706–QDT under the provisions of § 20.2056A–11); and in the year of my death, the Form 706–QDT must be filed and the payment made no later than the date my estate tax return is filed (or if no return is filed, no later than 9 months from the date of my death). I further agree that if I fail to timely file Form 706–QDT or to timely pay the tax imposed on the corpus portion of any annuity payment (determined after any extensions of time to pay granted to me under the provisions of § 20.2056A-11), I may become immediately liable to pay the amount of the tax determined by application of section 2056A(b)(1) on the entire remaining present value of the annuity, calculated as of the beginning of the year in which the payment was received with respect to which I failed to timely pay the tax or failed to timely file the return. However, I may make an application for relief under § 301.9100–1 of the Procedure and Administration Regulations, from the consequences of failing to timely file the Form 706–QDT or failing to timely pay the tax on the corpus portion. [The following sentence is applicable only in cases where the plan or arrangement is established and administered by a person or an entity that is located outside of the United States.] I agree, at the request of the District Director, [or the Assistant Commissioner (International) in the case of a surviving spouse of a nonresident noncitizen decedent or a surviving spouse of a United States citizen who died domiciled outside the United States] to enter into a security agreement to secure my undertakings under this agreement.

(7) *Agreement to roll over annuity payments*—(i) *Roll over of corpus portion.* Beginning in the calendar year of the receipt by the surviving spouse of the spouse's first annuity payment, the corpus portion of each annuity payment, as determined under paragraph (c)(4) of this section, must, within 60 days of receipt, be transferred to a QDOT. In addition, all annuity payments received during the calendar year must be reported on Form 706–QDT no later than April 15th of the year following the year in which the annuity payments are received, except that in the year of the surviving spouse's death, the Form 706–QDT must be filed no later than the date the estate tax return is filed (or if no return is filed, no later than 9 months from the date of the surviving spouse's death). See § 20.2056A–11 for extensions of time for filing Form 706–QDT.

(ii) *Agreement.* In order for a nonassignable annuity or other payment described in this paragraph (c) to qualify under paragraph (c)(3) of this section, the executor of the decedent's estate must file with the estate tax return the following Agreement To Roll Over Annuity Payments, which must be

signed by the surviving spouse of the decedent (or by the legal representative of the surviving spouse if the surviving spouse is legally incompetent to sign the agreement):

I [*name*] hereby agree that within 60 days of receipt of each annuity payment paid under the [*name of plan or arrangement*], I will transfer an amount equal to _____ percent (the corpus portion determined under § 20.2056A–4(c)(4) of the Estate Tax Regulations) of each annuity payment to [*identify the QDOT*]. Further, I will report all annuity payments received during the calendar year under the [*name of plan or arrangement*] on Form 706–QDT including a schedule of transfers to the [identify the QDOT]. I also agree that Form 706–QDT is to be filed no later than April 15th of the year following the year in which any annuity payments are received except that: in the case of annuity payments received in the year of my spouse's death, Form 706–QDT shall not be due prior to the due date, including extensions, for filing my spouse's estate tax return, or, if no return is filed, no later than 9 months from the date of my spouse's death (except if I am granted an extension of time to file Form 706–QDT under the provisions of § 20.2056A–11); and in the year of my death, the Form 706–QDT must be filed no later than the date my estate tax return is filed (or if no return is filed, no later than 9 months from the date of my death), and except if I am granted an extension of time to file Form 706–QDT under the provisions of § 20.2056A–11. I further agree that if I fail to timely transfer any required amount with respect to any annuity payment, or fail to timely file Form 706–QDT reporting the transfers for any year, I may become immediately liable to pay the amount of the tax determined by application of section 2056A(b)(1) on the entire remaining present value of the annuity, calculated as of the beginning of the year in which the payment was received with respect to which I failed to make the timely transfer or timely file a return. However, I may make an application for relief under § 301.9100–1 of the Procedure and Administration Regulations, from the consequences of failing to timely file Form 706–QDT or failing to timely transfer the corpus portion of any annuity payment to the QDOT. [The following sentence is applicable only in cases where the plan or arrangement is established and administered by a person or an entity that is located outside of the United States.] I agree, at the request of the District Director [or the Assistant Commissioner (International) in the case of a surviving spouse of a nonresident noncitizen decedent or a surviving spouse of a United States citizen who died domiciled outside the United States] to enter into a security agreement to secure my undertakings under this agreement.

(d) *Examples.* The provisions of this section are illustrated by the following examples. In each of the following examples the decedent, *D*, a citizen of the United States, died after August 22, 1995, and *D*'s surviving spouse, *S*, is not a United States citizen at the time of *D*'s death.

Example 1. Transfer and assignment of probate and nonprobate property to QDOT. (i) *S* is the beneficiary of the following probate and nonprobate assets included in *D*'s gross estate:

Pecuniary bequest under will	$400,000
Proceeds of life insurance	200,000
D's interest in property owned jointly with *S* includible in the gross estate under § 2040(a)	300,000
Devise of real property under will	100,000
Total	$1,000,000

(ii) Before the estate tax return for *D*'s estate is filed and before the date that the QDOT election must be made, *S* creates a QDOT pursuant to which all income is payable to *S* for life and the remainder is distributable to *S*'s children. *S* retains a power of appointment over the disposition of the remainder to ensure that *S* does not make an immediate gift of the remainder of the trust. Also, before the estate tax return is filed and before the date that the QDOT election must be made, *S* transfers the life insurance proceeds and the specifically devised real property to the QDOT. *S* decides not to transfer the property that had been jointly owned to the QDOT. Because S has not received distribution of the pecuniary bequest before *D*'s estate tax return is filed and before the date that the QDOT election must be made, *S* irrevocably assigns the interest in the pecuniary bequest to the QDOT. Assume that the pecuniary bequest is in fact transferred by *S* to the QDOT before the estate administration is concluded. *D*'s executor makes a QDOT election on the estate tax return for the $700,000 in property that *S* has transferred and assigned to the QDOT. A marital deduction of $700,000 is allowed to *D*'s estate assuming the estate tax return is filed and the QDOT election is made within the time limitation prescribed in § 20.2056A–3(a). No marital deduction is allowed for the $300,000 interest in jointly-owned property not transferred to the QDOT.

Example 2. Formula assignment. Under the terms of *D*'s will, the entire probate estate passes outright to *S*. Prior to the date *D*'s estate tax return is filed and before the date that the QDOT election must be made, *S* establishes a QDOT and *S* executes an irrevocable assignment in which *S* assigns to the QDOT, ''that portion of the gross estate necessary to reduce the estate tax to zero, taking into account all available credits and deductions.'' The assignment meets the requirements of paragraph (b) of this section, assuming that the QDOT is funded by the time that administration of *D*'s estate is completed.

Example 3. Jointly owned property. At the time of *D*'s death, *D* and *S* hold real property as joint tenants with right of survivorship. In accordance with section 2056(d)(1)(B), section 2040(a), and § 20.2056A–8(a), 60 percent of the value of the property is included in *D*'s gross estate. *S* establishes a QDOT and, prior to the date the estate tax return is filed and before the date that the QDOT election must be made, *S* transfers a 60 percent interest in the real property to the QDOT. The transfer satisfies the requirements of paragraph (b) of this section.

Example 4. Computation of corpus portion of annuity payment. (i) At the time of *D*'s death, *D* is a participant in an employees' pension plan described in section 401(a). On *D*'s death, *D*'s spouse *S*, a resident of the United States, becomes entitled to receive a survivor's annuity of $72,000 per year, payable monthly, for life. At the time of *D*'s death, *S* is age 60. Assume that under section 7520, the appropriate discount rate to be used for valuing annuities in the case of this decedent is 9 percent. The annuity factor at 9 percent for a person age 60 is 8.3031. The adjustment factor at 9 percent for monthly payments is 1.0406. Accordingly, the right to receive $72,000 a year on a monthly basis is equal to the right to receive $74,923 ($72,000 × 1.0406) on an annual basis.

(ii) The corpus portion of each annuity payment received by *S* is determined as follows. The first step is to determine the annuity factor for the number of years that would be required to exhaust a hypothetical fund that has a present value and a payout corresponding to *S*'s interest in the payments under the plan, determined as follows:

(A) Present value of *S*'s annuity: $74,923 x 8.3031 = $622,093

(B) Annuity Factor for Expected Annuity Term: $622,093/$74,923 = 8.3031

(iii) The second step is to determine the number of years that would be required for *S*'s annuity to exhaust a hypothetical fund of $622,093. The term certain annuity factor of 8.3031 falls between the annuity factors for 15 and 16 years in a 9 percent term certain annuity table (Column 1 of Table B, Publication 1457 *Alpha Volume* which may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402). Accordingly, the expected annuity term is 16 years.

(iv) The third step is to determine the corpus amount by dividing the expected term of 16 years into the present value of the hypothetical fund as follows:

Corpus amount of annual payment: $622,093/16 = $38,881

(v) In the fourth step, the corpus portion of each annuity payment is determined by dividing the corpus amount of each annual payment by the annual annuity payment as follows:

Corpus portion of each annuity payment: $38,881/$74,923 = .52

(vi) Accordingly, 52 percent of each payment to *S* is deemed to be a distribution of corpus. A marital deduction is allowed for $622,093, the present value of the annuity as of *D*'s date of death, if either: *S* agrees to roll over the corpus portion of each payment to a QDOT and the executor files the Information Statement described in paragraph (c)(5) of this section and the Roll Over Agreement described in paragraph (c)(7) of this section; or *S* agrees to pay the tax due on the corpus portion of each payment and the executor files the Information Statement described in paragraph (c)(5) of this section and the Payment Agreement described in paragraph (c)(6) of this section.

Example 5. Transfer to QDOT subject to gift tax. D's will bequeaths $700,000 outright to *S*. The bequest qualifies for a marital deduction under section 2056(a) except that it does not pass in a QDOT. *S* creates an irrevocable trust that meets the requirements for a QDOT and transfers the $700,000 to the QDOT. The QDOT instrument provides that *S* is entitled to all the income from the QDOT payable at least annually and that, upon the death of *S*, the property remaining in the QDOT is to be distributed to the grandchildren of *D* and *S* in equal shares. The trust instrument contains all other provisions required to qualify as a QDOT. On *D*'s estate tax return, *D*'s executor makes a QDOT election under section 2056A(a)(3). Solely for purposes of the marital deduction, the property is deemed to pass from *D* to the QDOT. *D*'s estate is entitled to a marital deduction for the $700,000 value of the property passing from *D* to *S*. *S*'s transfer of property to the QDOT is treated as a gift of the remainder interest for gift tax purposes because *S*'s transfer creates a vested remainder interest in the grandchildren of *D* and *S*. Accordingly, as of the date that *S* transfers the property to the QDOT, a gift tax is imposed on the present value of the remainder interest. See § 25.2702–1(c)(8) of this chapter exempting *S*'s transfer from the special valuation rules contained in section 2702. At *S*'s death, *S* is treated as the transferor of the property into the trust for estate tax and generation-skipping transfer tax purposes. See, e.g., sections 2036 and 2652(a)(1). The trust is not eligible for a reverse QTIP election by *D*'s estate under section 2652(a)(3) because a QTIP election cannot be made for the QDOT. This is so because the marital deduction is allowed under section 2056(a) for the outright bequest to the spouse and the spouse is then separately treated as the transferor of the property to the QDOT.

§ 20.2056A–5 Imposition of section 2056A estate tax.

(a) *In general.* An estate tax is imposed under section 2056A(b)(1) on the occurrence of a taxable event, as defined in section 2056A(b)(9). The tax is generally equal to the amount of estate tax that would have been imposed if the amount involved in the taxable event had been included in the decedent's taxable estate and had not been deductible under section 2056. See section 2056A(b)(3) and paragraph (c) of this section for certain exceptions from taxable events.

(b) *Amounts subject to tax*—(1) *Distribution of principal during the spouse's lifetime.* If a taxable event occurs during the noncitizen surviving spouse's lifetime, the amount on which the section 2056A estate tax is imposed is the amount of money and the fair market value of the property that is the subject of the distribution (including property distributed from the trust pursuant to the exercise of a power of appointment), including any amount withheld from the distribution by the U.S. Trustee to pay the tax. If, however, the tax is not withheld by the U.S. Trustee but is paid by the U.S. Trustee out of other assets of the QDOT, an amount equal to the tax so paid is treated as an additional distribution to the spouse in the year that the tax is paid.

(2) *Death of surviving spouse.* If a taxable event occurs as a result of the death of the surviving spouse, the amount subject to tax is the fair market value of the trust assets on the date of the spouse's death (or alternate valuation date if applicable). See also section 2032A. Any corpus portion amounts, within the meaning of § 20.2056A–4(c)(4)(i), remaining in a QDOT upon the surviving spouse's death, are subject to tax under section 2056A(b)(1)(B), as well as any residual payments resulting from a nonassignable plan or arrangement that, upon the surviving spouse's death, are payable to the spouse's estate or to successor beneficiaries.

(3) *Trust ceases to qualify as QDOT.* If a taxable event occurs as a result of the trust ceasing to qualify as a QDOT (for example, the trust ceases to have at least one U.S. Trustee), the amount subject to tax is the fair market value of the trust assets on the date of disqualification.

(c) *Distributions and dispositions not subject to tax*—(1) *Distributions of principal on account of hardship.* Section 2056A(b)(3)(B) provides an exemption from the section 2056A estate tax for distributions to the surviving spouse on account of hardship. A distribution of principal is treated as made on account of hardship if the distribution is made to the spouse from the QDOT in response to an immediate and substantial financial need relating to the spouse's health, maintenance, education, or support, or the health, maintenance, education, or support of any person that the surviving spouse is legally obligated to support. A distribution is not treated as made on account of hardship if the amount distributed may be obtained from other sources that are reasonably available to the surviving spouse; e.g., the sale by the surviving spouse of personally owned, publicly traded stock or the cashing in of a certificate of deposit owned by the surviving spouse. Assets such as closely held business interests, real estate and tangible personalty are not considered sources that are reasonably available to the surviving spouse. Although a hardship distribution of principal is exempt from the section 2056A estate tax, it must be reported on Form 706–QDT even if it is the only distribution that occurred during the filing period. See § 20.2056A–11 regarding filing requirements for Form 706–QDT.

(2) *Distributions of income to the surviving spouse.* Section 2056A(b)(3)(A) provides an exemption from the section 2056A estate tax for distributions of income to the surviving spouse. In general, for purposes of section 2056A(b)(3)(A), the term *income* has the same meaning as is provided in section 643(b), except that income does not include capital gains. In addition, income does not include any other item that would be allocated to corpus under applicable local law governing the administration of trusts irrespective of any specific trust provision to the contrary. In cases where there is no specific statutory or case law regarding the allocation of such items under the law governing the administration of the QDOT, the allocation under this paragraph (c)(2) will be governed by general principles of law (including but not limited to any uniform state acts, such as the Uniform Principal and Income Act, or any Restatements of applicable law). Further, except as provided in this paragraph (c)(2) or in administrative guidance published by the Internal Revenue Service, income does not include items constituting income in respect of a decedent (IRD) under section 691. However, in cases where a QDOT is designated by the decedent as a beneficiary of a pension or profit sharing plan described in section 401(a) or an individual retirement account or annuity described in section 408, the proceeds of which are payable to the QDOT in the form of an annuity, any payments received by the QDOT may be allocated between income and corpus using the method prescribed under § 20.2056A–4(c) for determining the corpus and income portion of an annuity payment.

(3) *Certain miscellaneous distributions and dispositions.* Certain miscellaneous distributions and dispositions of trust assets are exempt from the section 2056A estate tax, including but not limited to the following—

(i) Payments for ordinary and necessary expenses of the QDOT (including bond premiums and letter of credit fees);

(ii) Payments to applicable governmental authorities for income tax or any other applicable tax imposed on the QDOT (other than a payment of the section 2056A estate tax due on the occurrence of a taxable event as described in paragraph (b) of this section);

(iii) Dispositions of trust assets by the trustees (such as sales, exchanges, or pledging as collateral) for full and adequate consideration in money or money's worth; and

(iv) Pursuant to section 2056A(b)(15), amounts paid from the QDOT to reimburse the surviving spouse for any tax imposed on the spouse under Subtitle A of the Internal Revenue Code on any item of income of the QDOT to which the surviving spouse is not entitled under the terms of the trust. Such distributions include (but are not limited to) amounts paid from the QDOT to reimburse the spouse for income taxes paid by the spouse (either by actual payment or through withholding) with respect to amounts received from a nonassignable annuity or other arrangement that are transferred by the spouse to a QDOT pursuant to § 20.2056A– 4(c)(3); and income taxes paid by the spouse (either by actual payment or through withholding) with respect to amounts received in a lump sum distribution from a qualified plan if the lump sum distribution is assigned by the surviving spouse to a QDOT. For purposes of this paragraph (c)(3)(iv), the amount of attributable tax eligible for reimbursement is the difference between the actual income tax liability of the spouse and the spouse's income tax liability determined as if the item had not been included in the spouse's gross income in the applicable taxable year.

§ 20.2056A–6 Amount of tax.

(a) *Definition of tax.* Section 2056A(b)(2) provides for the computation of the section 2056A estate tax. For purposes of sections 2056A(b)(2)(A) (i) and (ii), in determining the tax that would have been imposed under section 2001 on the estate of the first decedent, the rates in effect on the date of the first decedent's death are used. For this purpose, the provisions of section 2001(c)(2) (pertaining to phaseout of graduated rates and unified credit) apply. In addition, for purposes of sections 2056A(b)(2)(A) (i) and (ii), *the tax which would have been imposed by section 2001 on the estate of the decedent* means the net tax determined under section 2001 or 2101, as the case may be, after allowance of any allowable credits, including the unified credit allowable under section 2010, the credit for state death taxes under section 2011, the credit for tax on prior transfers under section 2013, and the credit for foreign death taxes under section 2014. See paragraph (b)(4) of this section regarding the application of the credits under sections 2011 and 2014. In the case of a decedent nonresident not a citizen of the United States, the applicable credits are determined under section 2102. The estate tax (net of any applicable credits) imposed under section 2056A(b)(1) constitutes an estate tax for purposes of section 691(c)(2)(A).

(b) *Benefits allowed in determining amount of section 2056A estate tax*—(1) *General rule.* Section 2056A(b)(10) provides for the allowance of certain benefits in computing the section 2056A estate tax. Except as provided in this section, the rules of each of the credit, deduction and deferral provisions, as provided in the Internal Revenue Code must be complied with.

(2) *Treatment as resident.* For purposes of section 2056A(b)(10)(A), a noncitizen spouse is treated as a resident of the United States for purposes of determining whether the QDOT property is includible in the spouse's gross estate under chapter 11 of the Internal Revenue Code, and for purposes of determining whether any of the credits, deductions or deferral provisions are allowable with respect to the QDOT property to the estate of the spouse.

(3) *Special rule in the case of trusts described in section 2056(b)(8).* In the case of a QDOT in which the spouse's interest qualifies for a marital deduction under section 2056(b)(8), the provisions of section 2056A(b)(10)(A) apply in determining the allowance of a charitable deduction in computing the section 2056A estate tax, notwithstanding that the QDOT is not includible in the spouse's gross estate.

(4) *Credit for state and foreign death taxes.* If the assets of the QDOT are included in the surviving spouse's gross estate for federal estate tax purposes, or would have been so includible if the spouse had been a United States resident, and state or foreign death taxes are paid by the spouse's estate with respect to the QDOT, the taxes paid by the spouse's estate with respect to the QDOT are creditable, to the extent allowable under section 2011 or 2014, as applicable, in computing the section 2056A estate tax. In addition, state or foreign death taxes previously paid by the decedent/transferor's estate are also creditable in computing the section 2056A estate tax to the extent allowable under sections 2011 and 2014. Specifically, the tax that would have been imposed on the decedent's estate if the taxable estate had been increased by the value of the QDOT assets on the spouse's death plus the amount involved in prior taxable events (section 2056A(b)(2)(A)(i)), is determined after allowance of a credit equal to the lesser of the state or foreign death tax previously paid by the decedent's estate, or the amount prescribed under section 2011(b) or 2014(b) computed based on a taxable estate increased by such amounts. Similarly, the tax that would have been imposed on the decedent's estate if the taxable estate had been increased only by the amount involved in prior taxable events (section 2056A(b)(2)(A)(ii)) is determined after allowance of a credit equal to the lesser of the state or foreign death tax previously paid by the decedent's estate, or the amount prescribed under section 2011(b) or 2014(b) computed based on a taxable estate increased by the amount involved in such prior taxable events. See paragraph (d), *Example 2*, of this section.

(5) *Alternate valuation and special use valuation*—(i) *In general.* In order to claim the benefits of alternate valuation under section 2032, or special use valuation under section 2032A, for purposes of computing the section 2056A estate tax, an election must be made on the Form 706–QDT that is filed with respect to the balance remaining in the QDOT upon the death of the surviving spouse. In addition, the separate requirements for making the section 2032 and/or section 2032A elections under those sections and the regulations thereunder must be complied with except that, for this purpose, the surviving spouse is treated as a resident of the United States regardless of the surviving spouse's actual residency status. Solely for purposes of this paragraph (b)(5), the citizenship of the first decedent is immaterial.

(ii) *Alternate valuation.* For purposes of the alternate valuation election under section 2032, the election may not be made unless the election decreases both the value of the property remaining in the QDOT upon the death of the surviving spouse and the net amount of section 2056A estate tax due. Once made, the election is irrevocable.

(iii) *Special use valuation.* For purposes of section 2032A, the Designated Filer (in the case of multiple QDOTs) or the U.S. Trustee may elect to value certain farm and closely held business real property at its farm or business use value, rather than its fair market value, if all of the requirements under section 2032A and the applicable regulations are met, except that, for this purpose, the surviving spouse is treated as a resident of the United States regardless of the spouse's actual residency status. The total value of property valued under section 2032A in the QDOT cannot be decreased from fair market value by more than $750,000.

(c) *Miscellaneous rules.* See sections 2056A(b)(2)(B)(i) and 2056A(b)(2)(C) for special rules regarding the appropriate rate of tax. See section 2056A(b)(2)(B)(ii) for provisions regarding a credit or refund with respect to the section 2056A estate tax.

(d) *Examples.* The rules of this section are illustrated by the following examples.

Example 1. (i) *D*, a United States citizen, dies in 1995 a resident of State X, with a gross estate of $1,200,000. Under *D*'s will, a pecuniary bequest of $700,000 passes to a QDOT for the benefit of *D*'s spouse S, who is a resident but not a citizen of the United States. *D*'s estate tax is computed as follows:

Gross estate	$1,200,000	
Marital Deduction	(700,000)	
Taxable Estate	$500,000	
Gross Tax		$155,800
Less: Unified Credit		(155,800)
Net Tax		0

(ii) *S* dies in 1997 at which time *S* is still a resident of the United States and the value of the assets of the QDOT is $700,000. Assuming there were no taxable events during *S*'s lifetime with respect to the QDOT, the estate tax imposed under section 2056A(b)(1)(B) is $235,000, computed as follows:

D's actual taxable estate	$500,000	
QDOT property	700,000	
Total	$1,200,000	
Gross Tax		$427,800
Less: Unified Credit		(192,800)
Net Tax		§ 235,000
Less: Tax that would have been imposed on *D*'s actual taxable estate of $500,000		0
Section 2056A Estate Tax		$235,000

Example 2. (i) The facts are the same as in *Example 1*, except that *D*'s gross estate was $2,000,000 and *D*'s estate paid $70,000 in state death taxes to State X. *D*'s estate tax is computed as follows:

Gross Estate	$2,000,000		
Marital Deduction	(700,000)		
Taxable Estate	$1,300,000		
Gross Tax			$469,800
Less: Unified Credit		192,800	
State Death Tax Credit Limitation (lesser of $51,600 or $70,000 tax paid)		51,600	(244,400)
Estate Tax			$225,400

(ii) *S* dies in 1997 at which time *S* is still a resident of the United States and the value of the assets of the QDOT is $800,000. *S*'s estate pays $40,000 in State X death taxes with respect to the inclusion of the QDOT in *S*'s gross estate for state death tax purposes. Assuming there were no taxable events during *S*'s lifetime with respect to the QDOT, the estate tax imposed under section 2056A(b)(1)(B) is $304,800 computed as follows:

D's Actual Taxable Estate	$1,300,000	
QDOT Property	800,000	
Total	$2,100,000	
Gross Tax		$829,800
Less: Unified Credit		(192,800)
Pre-2011 section 2056A estate tax		$637,000
(A) State Death Tax Credit Computation:		
(1) State death tax paid by *S*'s estate with respect to the QDOT [$40,000] plus state death tax previously paid by *D*'s estate [$70,000] = $110,000.		
(2) Credit limit under section 2011(b) (based on *D*'s adjusted taxable estate of $2,040,000 under sections 2056A(b)(2)(A) and 2011(b)) = $106,800.		

(B) State death tax credit allowable against section 2056A estate tax (lesser of paragraph (ii)(A)(1) or (2) of this Example 2	.....	(106,800)
Net Tax	.....	$530,200
Less: Tax that would have been imposed on *D*'s taxable estate of $1,300,000	.....	225,400
Section 2056A Estate Tax	.....	$304,800

§ 20.2056A–7 Allowance of prior transfer credit under section 2013.

(a) *Property subject to QDOT election.* Section 2056(d)(3) provides special rules for computing the section 2013 credit allowed with respect to property subject to a QDOT election. In computing the credit under section 2013, the amount of the credit is determined under section 2013 and the regulations thereunder, except that—

(1) The first limitation as described in section 2013(b) and § 20.2013–2 is the amount of the estate tax imposed under section 2056A(b)(1)(A), with respect to distributions during the spouse's life, and under section 2056A(b)(1)(B), with respect to the value of the QDOT assets on the spouse's death;

(2) In computing the second limitation as described in section 2013(c) and § 20.2013–3, the value of the property transferred to the decedent (as defined in section 2013(d) and § 20.2013–4) is deemed to be the value of the QDOT assets on the date of death of the surviving spouse. The value as so determined is not reduced by the section 2056A estate tax imposed at the time of the spouse's death; and

(3) The amount of the credit is determined without regard to the percentage limitations contained in section 2013(a).

(b) *Property not subject to QDOT election.* If property includible in a decedent's gross estate passes to a noncitizen surviving spouse (the transferee) and no deduction is allowed to the decedent's estate for that interest in property under section 2056(a) solely because the requirements of section 2056(d)(2) are not satisfied, and the transferee spouse dies with an estate that is subject to tax under section 2001 or 2101, as the case may be, any credit for tax on prior transfers allowable to the estate of the transferee spouse under section 2013 with respect to such interest in property is determined in accordance with the rules of section 2013 and the regulations thereunder, except that the amount of the credit is determined without regard to the percentage limitations contained in section 2013(a).

(c) *Example.* The application of this section may be illustrated by the following example:

Example. The facts are the same as in § 20.2056A–6, *Example 2*(ii). *D*, a United States citizen, dies in 1994, a resident of State X, with a gross estate of $2,000,000. Under *D*'s will, a pecuniary bequest of $700,000 passes to a QDOT for the benefit of *D*'s spouse *S*, who is a resident but not a citizen of the United States. *S* dies in 1997 at which time *S* is still a resident of the United States and the value of the assets of the QDOT is $800,000. There were no taxable events during *S*'s lifetime. An estate tax of $304,800 is imposed under section 2056A(b)(1)(B). *S*'s taxable estate, including the value of the QDOT ($800,000), is $1,500,000.

(i) Under paragraph (a)(1) of this section, the first limitation for purposes of section 2013(b) is $304,800, the amount of the section 2056A estate tax.

(ii) Under paragraph (a)(2) of this section, the second limitation for purposes of section 2013(c) is computed as follows:

(A) *S*'s net estate tax payable under § 20.2013–3(a)(1), as modified under paragraph (a)(2) of this section, is computed as follows:

Taxable estate ..	.....	$1,500,000
Gross estate tax	.....	555,800
Less: Unified credit	$192,800	.....
Credit for state death taxes	64,400	257,200
Pre-2013 net estate tax payable	.....	$298,600

(B) *S*'s net estate tax payable under § 20.2013–3(a)(2), as modified under paragraph (a)(2) of this section, is computed as follows:

Taxable estate ..	.....	$700,000
Gross estate tax	.....	229,800
Less: Unified credit	$192,800	.....
Credit for state death taxes	18,000	210,800
Net tax payable	.....	$19,000
(C) *Second Limitation:* Paragraph (ii)(A) of this *Example*	$298,600	.....
Less: Paragraph (ii)(B) of this *Example*	19,000	
		$279,600

(iii) Credit for tax on prior transfers = $279,600 (lesser of paragraphs (i) or (ii) of this *Example.*

§ 20.2056A–8 Special rules for joint property.

(a) *Inclusion in gross estate*—(1) *General rule.* If property is held by the decedent and the surviving spouse of the decedent as joint tenants with right of survivorship, or as tenants by the entirety, and the surviving spouse is not a United States citizen (or treated as a United States citizen) at the time of the decedent's death, the property is subject to inclusion in the decedent's gross estate in accordance with the rules of section 2040(a) (general rule for includibility of joint interests), and section 2040(b) (special rule for includibility of certain joint interests of husbands and wives) does not apply. Accordingly, the rules contained in section 2040(a) and § 20.2040–1 govern the extent to which such joint interests are includible in the gross estate of a decedent who was a citizen or resident of the United States. Under § 20.2040–1(a)(2), the entire value of jointly held property is included in the decedent's gross estate unless the executor submits facts sufficient to show that property was not entirely acquired with consideration furnished by the decedent, or was acquired by the decedent and the other joint owner by gift, bequest, devise or inheritance. If the decedent is a nonresident not a citizen of the United States, the rules of this paragraph (a)(1) apply pursuant to sections 2103, 2031, 2040(a), and 2056(d)(1)(B).

(2) *Consideration furnished by surviving spouse.* For purposes of applying section 2040(a), in determining the amount of consideration furnished by the surviving spouse, any consideration furnished by the decedent with respect to the property before July 14, 1988, is treated as consideration furnished by the surviving spouse to the

extent that the consideration was treated as a gift to the spouse under section 2511, or to the extent that the decedent elected to treat the transfer as a gift to the spouse under section 2515 (to the extent applicable). For purposes of determining whether the consideration was a gift by the decedent under section 2511, it is presumed that the decedent was a citizen of the United States at the time the consideration was so furnished to the spouse. The special rule of this paragraph (a)(2) is applicable only if the donor spouse predeceases the donee spouse and not if the donee spouse predeceases the donor spouse. In cases where the donee spouse predeceases the donor spouse, any portion of the consideration treated as a gift to the donee spouse/decedent on the creation of the tenancy (or subsequently thereafter), regardless of the date the tenancy was created, is not treated as consideration furnished by the donee spouse/decedent for purposes of section 2040(a).

(3) *Amount allowed to be transferred to QDOT.* If, as a result of the application of the rules described above, only a portion of the value of a jointly-held property interest is includible in a decedent's gross estate, only that portion that is so includible may be transferred to a QDOT under section 2056(d)(2). See § 20.2056A–4(b)(1) and (d), *Example 3.*

(b) *Surviving spouse becomes citizen.* Paragraph (a) of this section does not apply if the surviving spouse meets the requirements of section 2056(d)(4). For the definition of resident in applying section 2056(d)(4), see § 20.0–1(b).

(c) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. In 1987, *D,* a United States citizen, purchases real property and takes title in the names of *D* and *S, D*'s spouse (a noncitizen, but a United States resident), as joint tenants with right of survivorship. In accordance with § 25.2511–1(h)(5) of this chapter, one-half of the value of the property is a gift to *S*. *D* dies in 1995. Because *S* is not a United States citizen, the provisions of section 2040(a) are determinative of the extent to which the real property is includible in *D*'s gross estate. Because the joint tenancy was established before July 14, 1988, and under the applicable provisions of the Internal Revenue Code and regulations the transfer was treated as a gift of one-half of the property, one-half of the value of the property is deemed attributable to consideration furnished by *S* for purposes of section 2040(a). Accordingly, only one-half of the value of the property is includible in *D*'s gross estate under section 2040(a).

Example 2. The facts are the same as in *Example 1,* except that *S* dies in 1995 survived by *D* who is not a citizen of the United States. For purposes of applying section 2040(a), *D*'s gift to *S* on the creation of the tenancy is not treated as consideration furnished by *S* toward the acquisition of the property. Accordingly, since *S* made no other contributions with respect to the property, no portion of the property is includible in *S*'s gross estate.

Example 3. The facts are the same as in *Example 1,* except that *D* and *S* purchase real property in 1990 making the down payment with funds from a joint bank account. All subsequent mortgage payments and improvements are paid from the joint bank account. The only funds deposited in the joint bank account are the earnings of *D* and *S*. It is established that *D* earned approximately 60% of the funds and *S* earned approximately 40% of the funds. *D* dies in 1995. The establishment of *S*'s contribution to the joint bank account is sufficient to show that *S* contributed 40% of the consideration for the property. Thus, under paragraph § 20.2040–1(a)(2), 60% of the value of the property is includible in *D*'s gross estate.

§ 20.2056A–9 Designated Filer.

Section 2056A(b)(2)(C) provides special rules where more than one QDOT is established with respect to a decedent. The designation of a person responsible for filing a return under section 2056A(b)(2)(C)(i) (the Designated Filer) must be made on the decedent's federal estate tax return, or on the first Form 706–QDT that is due and is filed by its prescribed date, including extensions. The Designated Filer must be a U.S. Trustee. If the U.S. Trustee is an individual, that individual must have a tax home (as defined in section 911(d)(3)) in the United States. At least sixty days before the due date for filing the tax returns for all of the QDOTs, the U.S. Trustee(s) of each of the QDOTs must provide to the Designated Filer all of the necessary information relating to distributions from their respective QDOTs. The section 2056A estate tax due from each QDOT is allocated on a pro rata basis (based on the ratio of the amount of each respective distribution constituting a taxable event to the amount of all such distributions), unless a different allocation is required under the terms of the governing instrument or under local law. Unless the decedent has provided for a successor Designated Filer, if the Designated Filer ceases to qualify as a U.S. Trustee, or otherwise becomes unable to serve as the Designated Filer, the remaining trustees of each QDOT must select a qualifying successor Designated Filer (who is also a U.S. Trustee) prior to the due date for the filing of Form 706–QDT (including extensions). The selection is to be indicated on the Form 706–QDT. Failure to select a successor Designated Filer will result in the application of section 2056A(b)(2)(C).

§ 20.2056A–10 Surviving spouse becomes citizen after QDOT established.

(a) *Section 2056A estate tax no longer imposed under certain circumstances.* Section 2056A(b)(12) provides that a QDOT is no longer subject to the imposition of the section 2056A estate tax if the surviving spouse becomes a citizen of the United States and the following conditions are satisfied—

(1) The spouse either was a United States resident (for the definition of resident for this purpose, see § 20.2056A–1(b)) at all times after the death of the decedent and before becoming a United States citizen, or no taxable distributions are made from the QDOT before the spouse becomes a United States citizen (regardless of the residency status of the spouse); and

(2) The U.S. Trustee(s) of the QDOT notifies the Internal Revenue Service and certifies in writing that the surviving spouse has become a United States citizen. Notice is to be made by filing a final Form 706–QDT on or before April 15th of the calendar year following the year in which the surviving spouse becomes a United States citizen, unless an extension of time for filing is granted under section 6081.

(b) *Special election by spouse.* If the surviving spouse becomes a United States citizen and the spouse is not a United States resident at all times after the death of the decedent and before becoming a United States citizen, and a tax was previously imposed under section 2056A(b)(1)(A) with respect to any distribution from the QDOT before the surviving spouse becomes a United States citizen, the estate tax imposed under section 2056A(b)(1) does not apply to distributions after the spouse becomes a citizen if—

(1) The spouse elects to treat any taxable distribution from the QDOT prior to the spouse's election as a taxable gift made by the spouse for purposes of section 2001(b)(1)(B) (referring to adjusted taxable gifts), and for purposes of determining the amount of the tax imposed by section 2501 on actual taxable gifts made by the spouse during the year in which the spouse becomes a citizen or in any subsequent year;

(2) The spouse elects to treat any previous reduction in the section 2056A estate tax by reason of the decedent's unified credit (under either section 2010 or section 2102(c)) as a reduction in the spouse's unified credit under section 2505 for purposes of determining the amount of the credit allowable with

respect to taxable gifts made by the surviving spouse during the taxable year in which the spouse becomes a citizen, or in any subsequent year; and

(3) The elections referred to in this paragraph (b) are made by timely filing a Form 706–QDT on or before April 15th of the year following the year in which the surviving spouse becomes a citizen (unless an extension of time for filing is granted under section 6081) and attaching notification of the election to the return.

§ 20.2056A–11 Filing requirements and payment of the section 2056A estate tax.

(a) *Distributions during surviving spouse's life.* Section 2056A(b)(5)(A) provides the due date for payment of the section 2056A estate tax imposed on distributions during the spouse's lifetime. An extension of not more than 6 months may be obtained for the filing of Form 706–QDT under section 6081(a) if the conditions specified therein are satisfied. See also § 20.2056A- 5(c)(1) regarding the requirements for filing a Form 706–QDT in the case of a distribution to the surviving spouse on account of hardship, and § 20.2056A–2T(d)(3) regarding the requirements for filing Form 706–QDT in the case of the required annual statement.

(b) *Tax at death of surviving spouse.* Section 2056A(b)(5)(B) provides the due date for payment of the section 2056A estate tax imposed on the death of the spouse under section 2056A(b)(1)(B). An extension of not more than 6 months may be obtained for the filing of the Form 706–QDT under section 6081(a), if the conditions specified therein are satisfied. The obtaining of an extension of time to file under section 6081(a) does not extend the time to pay the section 2056A estate tax as prescribed under section 2056A(b)(5)(B).

(c) *Extension of time for paying section 2056A estate tax—(1) Extension of time for paying tax under section 6161(a)(2).* Pursuant to sections 2056A(b)(10)(C) and 6161(a)(2), upon a showing of reasonable cause, an extension of time for a reasonable period beyond the due date may be granted to pay any part of the estate tax that is imposed upon the surviving spouse's death under section 2056A(b)(1)(B) and shown on the final Form 706–QDT, or any part of any installments of such tax payable under section 6166 (including any part of a deficiency prorated to any installment under such section). The extension may not exceed 10 years from the date prescribed for payment of the tax (or in the case of an installment or part of a deficiency prorated to an installment, if later, not beyond the date that is 12 months after the due date for the last installment). Such extension may be granted by the district director or the director of the service center where the Form 706–QDT is filed.

(2) *Extension of time for paying tax under section 6161(a)(1).* An extension of time beyond the due date to pay any part of the estate tax imposed on lifetime distributions under section 2056A(b)(1)(A), or imposed at the death of the surviving spouse under section 2056A(b)(1)(B), may be granted for a reasonable period of time, not to exceed 6 months (12 months in the case of the estate tax imposed under section 2056A(b)(1)(B) at the surviving spouse's death), by the district director or the director of the service center where the Form 706–QDT is filed.

(d) *Liability for tax.* Under section 2056A(b)(6), each trustee (and not solely the U.S. Trustee(s)) of a QDOT is personally liable for the amount of the estate tax imposed in the case of any taxable event under section 2056A(b)(1). In the case of multiple QDOTs with respect to the same decedent, each trustee of a QDOT is personally liable for the amount of the section 2056A estate tax imposed on any taxable event with respect to that trustee's QDOT, but is not personally liable for tax imposed with respect to taxable events involving QDOTs of which that person is not a trustee. However, the assets of any QDOT are subject to collection by the Internal Revenue Service for any tax resulting from a taxable event with respect to any other QDOT established with respect to the same decedent. The trustee may also be personally liable as a withholding agent under section 1461 or other applicable provisions of the Internal Revenue Code.

§ 20.2056A–12 Increased basis for section 2056A estate tax paid with respect to distribution from a QDOT.

Under section 2056A(b)(13), in the case of any distribution from a QDOT on which an estate tax is imposed under section 2056A(b)(1)(A), the distribution is treated as a transfer by gift for purposes of section 1015, and any estate tax paid under section 2056A(b)(1)(A) is treated as a gift tax. See § 1.1015–5(c)(4) and (5) of this chapter for rules for determining the amount by which the basis of the distributed property is increased.

§ 20.2056A–13 Effective date.

The provisions of §§ 20.2056A–1 through 20.2056A–12 are effective with respect to estates of decedents dying after August 22, 1995.

Par. 7. § 20.2101–1 is revised to read as follows:

§ 20.2101–1 Estates of nonresidents not citizens; tax imposed.

(a) *Imposition of tax.* Section 2101 imposes a tax on the transfer of the taxable estate of a nonresident who is not a citizen of the United States at the time of death. In the case of estates of decedents dying after November 10, 1988, the tax is computed at the same rates as the tax that is imposed on the transfer of the taxable estate of a citizen or resident of the United States in accordance with the provisions of sections 2101(b) and (c). For the meaning of the terms *resident, nonresident,* and *United States*, as applied to a decedent for purposes of the estate tax, see § 20.0–1(b)(1) and (2). For the liability of the executor for the payment of the tax, see section 2002. For special rules as to the phaseout of the graduated rates and unified credit, see sections 2001(c)(2) and 2101(b).

(b) *Special rates in the case of certain decedents.* In the case of an estate of a nonresident who was not a citizen of the United States and who died after December 31, 1976, and on or before November 10, 1988, the tax on the nonresident's taxable estate is computed using the formula provided under section 2101(b), except that the rate schedule in paragraph (c) of this section is to be used in lieu of the rate schedule in section 2001(c).

(c) *Rate schedule for decedents dying after December 31, 1976 and on or before November 10, 1988.*

If the amount for which the tentative tax to be computed is:	The tentative tax is:
Not over $100,000	6% of such amount.
Over $100,000 but not over $500,000	$6,000, plus 12% of excess over $100,000.
Over $500,000 but not over $1,000,000	$54,000, plus 18% of excess over $500,000.
Over $1,000,000 but not over $2,000,000	$144,000, plus 24% of excess over $1,000,000.
Over $2,000,000	$384,000, plus 30% of excess over $2,000,000.

Par. 8. Section 20.2102–1 is amended by adding paragraph (c) to read as follows:

§ 20.2102–1 Estates of nonresidents not citizens; credits against tax.

* * * * *

(c) *Unified credit—*

(1) *In general.* Subject to paragraph (c)(2) of this section, in the case of estates of decedents dying after November 10, 1988, a unified credit of $13,000 is allowed against the tax imposed by section 2101 subject to the limitations of section 2102(c).

(2) *When treaty is applicable.* To the extent required under any treaty obligation of the United States, the estate of a nonresident not a citizen of the United States is allowed the unified credit permitted to a United States citizen or resident of $192,800, multiplied by the proportion that the total gross estate of the decedent situated in the United States bears to the decedent's total gross estate wherever situated.

(3) *Certain residents of possessions.* In the case of a decedent who is considered to be a nonresident not a citizen of the United States under section 2209, there is allowed a unified credit equal to the greater of $13,000, or $46,800 multiplied by the proportion that the decedent's gross estate situated in the United States bears to the total gross estate of the decedent wherever situated.

Par. 9. Section 20.2106–1 is amended as follows:

1. Paragraph (a)(3) is revised.

2. The last sentence of paragraph (b) is removed.

3. Paragraph (c) is removed.

The revision reads as follows:

§ 20.2106–1 Estates of nonresidents not citizens; taxable estate; deductions in general.

(a) * * *

(3) Subject to the special rules set forth at § 20.2056A–1(c), the amount which would be deductible with respect to property situated in the United States at the time of the decedent's death under the principles of section 2056. Thus, if the surviving spouse of the decedent is a citizen of the United States at the time of the decedent's death, a marital deduction is allowed with respect to the estate of the decedent if all other applicable requirements of section 2056 are satisfied. If the surviving spouse of the decedent is not a citizen of the United States at the time of the decedent's death, the provisions of section 2056, including specifically the provisions of section 2056(d) and (unless section 2056(d)(4) applies) the provisions of section 2056A (QDOTs) must be satisfied.

* * * * *

§ 20.2106–2 [Amended]

Par. 10. In § 20.2106–2, paragraph (c) is removed and reserved.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31,1954

Par. 11. The authority citation for part 25 is revised to read as follows:

Authority: 26 U.S.C. 7805.

Par. 12. Section 25.2503–2 is amended as follows:

1. The first sentence in paragraph (a) is revised.

2. Paragraph (f) is added.

3. The revision and addition read as follows:

§ 25.2503–2 Exclusion from gifts.

(a) * * * Except as provided in paragraph (f) of this section (involving gifts to a noncitizen spouse), the first $10,000 of gifts made to any one donee during the calendar year 1982 or any calendar year thereafter, except gifts of future interests in property as defined in §§ 25.2503–3 and 25.2503–4, is excluded in determining the total amount of gifts for the calendar year. * * *

* * * * *

(f) *Special rule in the case of gifts made on or after July 14, 1988, to a spouse who is not a United States citizen*—(1) *In general.* Subject to the special rules set forth at § 20.2056A–1(c) of this chapter, in the case of gifts made on or after July 14, 1988, if the donee of the gift is the donor's spouse and the donee spouse is not a citizen of the United States at the time of the gift, the first $100,000 of gifts made during the calendar year to the donee spouse (except gifts of future interests) is excluded in determining the total amount of gifts for the calendar year. The rule of this paragraph (f) applies regardless of whether the donor is a citizen or resident of the United States for purposes of chapter 12 of the Internal Revenue Code.

(2) *Gifts made after June 29, 1989.* In the case of gifts made after June 29, 1989, the $100,000 exclusion provided in paragraph (f)(1) of this section applies only if the gift in excess of the otherwise applicable annual exclusion is in a form that qualifies for the gift tax marital deduction under section 2523(a) but for the provisions of section 2523(i)(1) (disallowing the marital deduction if the donee spouse is not a United States citizen.) See § 25.2523(i)–1(d), *Example 4.*

(3) *Effective date.* This paragraph (f) is effective with respect to gifts made after August 22, 1995.

Par. 13. §§ 25.2523(i)–1, 25.2523(i)–2 and 25.2523(i)–3 are added to read as follows:

§ 25.2523(i)–1 Disallowance of marital deduction when spouse is not a United States citizen.

(a) *In general.* Subject to § 20.2056A–1(c) of this chapter, section 2523(i)(1) disallows the marital deduction if the spouse of the donor is not a citizen of the United States at the time of the gift. If the spouse of the donor is a citizen of the United States at the time of the gift, the gift tax marital deduction under section 2523(a) is allowed regardless of whether the donor is a citizen or resident of the United States at the time of the gift, subject to the otherwise applicable rules of section 2523.

(b) *Exception for certain joint and survivor annuities.* Paragraph (a) does not apply to disallow the marital deduction with respect to any transfer resulting in the acquisition of rights by a noncitizen spouse under a joint and survivor annuity described in section 2523(f)(6).

(c) *Increased annual exclusion*—(1) *In general.* In the case of gifts made from a donor to the donor's spouse for which a marital deduction is not allowable under this section, if the gift otherwise qualifies for the gift tax annual exclusion under section 2503(b), the amount of the annual exclusion under section 2503(b) is $100,000 in lieu of $10,000. However, in the case of gifts made after June 29, 1989, in order for the increased annual exclusion to apply, the gift in excess of the otherwise applicable annual exclusion under section 2503(b) must be in a form that qualifies for the marital deduction but for the disallowance provision of section 2523(i)(1). See paragraph (d), *Example 4*, of this section.

(2) *Status of donor.* The $100,000 annual exclusion for gifts to a noncitizen spouse is available regardless of the status of the donor. Accordingly, it is immaterial whether the donor is a citizen, resident or a nonresident not a citizen of the United States, as long as the spouse of the donor is not a citizen of the United States at the time of the gift and the conditions for allowance of the increased annual exclusion have been satisfied. See § 25.2503–2(f).

(d) *Examples.* The principles outlined in this section are illustrated in the following examples. Assume in each of the examples that the donee, *S*, is *D's* spouse and is not a United States citizen at the time of the gift.

Example 1. Outright transfer of present interest. In 1995, *D,* a United States citizen, transfers to *S,* outright, 100 shares of *X* corporation stock valued for federal gift tax purposes at $130,000. The transfer is a gift of a present interest in property under section 2503(b). Additionally, the gift qualifies for the gift tax marital deduction except for the disallowance provision of section 2523(i)(1). Accordingly, $100,000 of the $130,000 gift is excluded from the total amount of gifts made during the calendar year by *D* for gift tax purposes.

Example 2. Transfer of survivor benefits. In 1995, *D,* a United States citizen, retires from employment in the United States and elects to receive a reduced retirement annuity in order to provide *S* with a survivor annuity upon *D*'s death. The transfer of rights to *S* in the joint and survivor annuity is a gift by *D* for gift tax purposes. However, under paragraph (b) of this section, the gift qualifies for the gift tax marital deduction even though *S* is not a United States citizen.

Example 3. Transfer of present interest in trust property. In 1995, *D,* a resident alien, transfers property valued at $500,000 in trust to *S,* who is also a resident alien. The trust instrument provides that the trust income is payable to *S* at least quarterly and *S* has a testamentary general power to appoint the trust corpus. The transfer to *S* qualifies for the marital deduction under section 2523 but for the provisions of section 2523(i)(1). Because *S* has a life income interest in the trust, *S* has a present interest in a portion of the trust. Accordingly, *D* may exclude the present value of *S*'s income interest (up to $100,000) from *D*'s total 1995 calendar year gifts.

Example 4. Transfer of present interest in trust property. The facts are the same as in *Example 3,* except that *S* does not have a testamentary general power to appoint the trust corpus. Instead, *D*'s child, *C,* has a remainder interest in the trust. If *S* were a United States citizen, the transfer would qualify for the gift tax marital deduction if a qualified terminable interest property election was made under section 2523(f)(4). However, because *S* is not a U.S. citizen, *D* may not make a qualified terminable interest property election. Accordingly, the gift does not qualify for the gift tax marital deduction but for the disallowance provision of section 2523(i)(1). The $100,000 annual exclusion under section 2523(i)(2) is not available with respect to *D*'s transfer in trust and *D* may not exclude the present value of *S*'s income interest in excess of $10,000 from *D*'s total 1995 calendar year gifts.

Example 5. Spouse becomes citizen after transfer. D, a United States citizen, transfers a residence valued at $350,000 on December 20, 1995, to *D*'s spouse, *S,* a resident alien. On January 31, 1996, *S* becomes a naturalized United States citizen. On *D*'s federal gift tax return for 1995, *D* must include $250,000 as a gift ($350,000 transfer less $100,000 exclusion). Although *S* becomes a citizen in January, 1996, *S* is not a citizen of the United States at the time the transfer is made. Therefore, no gift tax marital deduction is allowable. However, the transfer does qualify for the $100,000 annual exclusion.

§ 25.2523(i)–2 Treatment of spousal joint tenancy property where one spouse is not a United States citizen.

(a) *In general.* In the case of a joint tenancy with right of survivorship between spouses, or a tenancy by the entirety, where the donee spouse is not a United States citizen, the gift tax treatment of the creation and termination of the tenancy (regardless of whether the donor is a citizen, resident or nonresident not a citizen of the United States at such time), is governed by the principles of sections 2515 and 2515A (as such sections were in effect before their repeal by the Economic Recovery Tax Act of 1981). However, in applying these principles, the donor spouse may not elect to treat the creation of a tenancy in real property as a gift, as provided in section 2515(c) (prior to its repeal by the Economic Recovery Tax Act of 1981, Pub. L. 97–34, 95 Stat. 172).

(b) *Tenancies by the entirety and joint tenancies in real property*—(1) *Creation of the tenancy on or after July 14, 1988.* Under the principles of section 2515 (without regard to section 2515(c)), the creation of a tenancy by the entirety (or joint tenancy) in real property (either by one spouse alone or by both spouses), and any additions to the value of the tenancy in the form of improvements, reductions in indebtedness thereon, or otherwise, is not deemed to be a transfer of property for purposes of the gift tax, regardless of the proportion of the consideration furnished by each spouse, but only if the creation of the tenancy would otherwise be a gift to the donee spouse who is not a citizen of the United States at the time of the gift.

(2) *Termination*—(i) *Tenancies created after December 31, 1954 and before January 1,1982 not subject to an election under section 2515(c), and tenancies created on or after July 14, 1988.* When a tenancy to which this paragraph (b) applies is terminated on or after July 14, 1988, other than by reason of the death of a spouse, then, under the principles of section 2515, a spouse is deemed to have made a gift to the extent that the proportion of the total consideration furnished by the spouse, multiplied by the proceeds of the termination (whether in the form of cash, property, or interests in property), exceeds the value of the proceeds of termination received by the spouse. See section 2523(i), and § 25.2523(i)–1 and § 25.2503–2(f) as to certain of the tax consequences that may result upon termination of the tenancy. This paragraph (b)(2)(i) applies to tenancies created after December 31, 1954, and before January 1, 1982, not subject to an election under section 2515(c), and to tenancies created on or after July 14, 1988.

(ii) *Tenancies created after December 31, 1954 and before January 1, 1982 subject to an election under section 2515(c) and tenancies created after December 31, 1981 and before July 14, 1988.* When a tenancy to which this paragraph (b) applies is terminated on or after July 14, 1988, other than by reason of the death of a spouse, then, under the principles of section 2515, a spouse is deemed to have made a gift to the extent that the proportion of the total consideration furnished by the spouse, multiplied by the proceeds of the termination (whether in the form of cash, property, or interests in property), exceeds the value of the proceeds of termination received by the spouse. See section 2523(i), and §§ 25.2523(i)–1 and 25.2503–2(f) as to certain of the tax consequences that may result upon termination of the tenancy. In the case of tenancies to which this paragraph applies, if the creation of the tenancy was treated as a gift to the noncitizen donee spouse under section 2515(c) (in the case of tenancies created prior to 1982) or section 2511 (in the case of tenancies created after December 31, 1981 and before July 14, 1988), then, upon termination of the tenancy, for purposes of applying the principles of section 2515 and the regulations thereunder, the amount treated as a gift on creation of the tenancy is treated as consideration originally belonging to the noncitizen spouse and never acquired by the noncitizen spouse from the donor spouse. This paragraph (b)(2)(ii) applies to tenancies created after December 31, 1954, and before January 1, 1982, subject to an election under section 2515(c), and to tenancies created after December 31, 1981, and before July 14, 1988.

(3) *Miscellaneous provisions*—(i) *Tenancy by the entirety.* For purposes of this section, *tenancy by the entirety* includes a joint tenancy between husband and wife with right of survivorship.

(ii) *No election to treat as gift.* The regulations under section 2515 that relate to the election to treat the creation of a tenancy by the entirety as constituting a gift and the consequences of such an election upon termination of the tenancy (§§ 25.2515–2 and 25.2515–4) do not apply for purposes of section 2523(i)(3).

(4) *Examples.* The application of this section may be illustrated by the following examples:

Example 1. In 1992, *A,* a United States citizen, furnished $200,000 and *A*'s spouse *B,* a resident alien, furnished $50,000 for the purchase and subsequent improvement of

real property held by them as tenants by the entirety. The property is sold in 1998 for $300,000. *A* receives $225,000 and *B* receives $75,000 of the sales proceeds. The termination results in a gift of $15,000 by *A* to *B*, computed as follows:

$$\frac{\$200{,}000\ \text{(consideration furnished by A)}}{\$250{,}000\ \text{(total consideration furnished by both spouses)}} \times \$300{,}000\ \text{(proceeds of termination)} = \$240{,}000\ \text{(Proceeds of termination attributable to A.)}$$

$240,000 − $225,000 (proceeds received by *A*)=$15,000 gift by *A* to *B*.

Example 2. In 1986, *A* purchased real property for $300,000 and took title in the names of *A* and *B*, *A*'s spouse, as joint tenants. Under section 2511 and § 25.2511–1(h)(1) of the regulations, *A* was treated as making a gift of one-half of the value of the property ($150,000) to *B*. In 1995, the real property is sold for $400,000 and *B* receives the entire proceeds of sale. For purposes of determining the amount of the gift on termination of the tenancy under the principles of section 2515 and the regulations thereunder, the amount treated as a gift to *B* on creation of the tenancy under section 2511 is treated as *B*'s contribution towards the purchase of the property. Accordingly, the termination of the tenancy results in a gift of $200,000 from *A* to *B* determined as follows:

$$\frac{\$150{,}000\ \text{(consideration furnished by A)}}{\$300{,}000\ \text{(total consideration deemed furnished by both spouses)}} \times \$400{,}000\ \text{(proceeds of termination)} = \$200{,}000\ \text{(Proceeds of termination attributable to A.)}$$

$200,000 − 0 (proceeds received by *A*)=$200,000 gift by *A* to *B*.

(c) *Tenancies by the entirety in personal property where one spouse is not a United States citizen*—(1) *In general.* In the case of the creation (either by one spouse alone or by both spouses where at least one of the spouses is not a United States citizen) of a joint interest in personal property with right of survivorship, or additions to the value thereof in the form of improvements, reductions in the indebtedness thereof, or otherwise, the retained interest of each spouse, solely for purposes of determining whether there has been a gift by the donor to the spouse who is not a citizen of the United States at the time of the gift, is treated as one-half of the value of the joint interest. See section 2523(i) and §§ 25.2523(i)–1 and 25.2503–2(f) as to certain of the tax consequences that may result upon creation and termination of the tenancy.

(2) *Exception.* The rule provided in paragraph (c)(1) of this section does not apply with respect to any joint interest in property if the fair market value of the interest in property (determined as if each spouse had a right to sever) cannot reasonably be ascertained except by reference to the life expectancy of one or both spouses. In these cases, actuarial principles may need to be resorted to in determining the gift tax consequences of the transaction.

§ 25.2523(i)–3 Effective date.

The provisions of §§ 25.2523(i)–1 and 25.2523(i)–2 are effective in the case of gifts made after August 22, 1995.

Par. 14. In § 25.2702–1, paragraph (c)(8) is added to read as follows:

§ 25.2702–1 Special valuation rules in the case of transfers of interests in trust.

* * * * *

(c) * * *

(8) *Transfer or assignment to a Qualified Domestic Trust.* A transfer or assignment (as described in section 2056(d)(2)(B)) by a noncitizen surviving spouse of property to a Qualified Domestic Trust under the circumstances described in § 20.2056A–4(b) of this chapter, where the surviving spouse retains an interest in the transferred property that is not a qualified interest and the transfer is not described in sections 2702(a)(3)(A)(ii) or 2702(c)(4).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 15. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 16. Section 602.101(c) is amended by adding entries in numerical order in the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
20.2056A–3	1545–1360
20.2056A–4	1545–1360
20.2056A–10	1545–1360
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 21, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19867 Filed 8–21–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 20 and 602

[TD 8613]

RIN 1545–AS67

Requirements to Ensure Collection of Section 2056A Estate Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance relating to the additional requirements necessary to ensure the collection of the estate tax imposed under section 2056A(b) with respect to taxable events involving qualified domestic trusts (QDOTs) described in section 2056A(a). The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective August 22, 1995.

These regulations apply to estates of decedents dying after March 7, 1996.

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

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1443.

For further information concerning this collection of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

This document contains amendments to the Estate Tax Regulations (26 CFR part 20) under section 2056A of the Internal Revenue Code of 1986 (Code). Section 2056A was added by section 5033 of the Technical and Miscellaneous Revenue Act of 1988. These temporary regulations provide additional requirements that must be satisfied in order for a trust to qualify as a QDOT. The requirements are necessary to ensure the collection of the section 2056A estate tax that is imposed upon any distribution of principal from the QDOT, upon the death of the surviving spouse, or if the trust ceases to qualify as a QDOT.

Explanation of Provisions

Section 2056A(a)(2) authorizes the Secretary to promulgate regulations that will ensure the collection of the estate tax imposed under section 2056A(b). In accordance with this grant of regulatory authority, a notice of proposed rulemaking was published in the **Federal Register** (58 FR 305), on January 5, 1993. The Service received written comments on the proposed regulations and, on April 2, 1993, held a public hearing on the regulations. After consideration of all written and oral comments received, it was determined to issue these regulations as temporary and proposed regulations in order to obtain additional public comment with respect to the additional requirements necessary to ensure collection of the section 2056A estate tax in view of the significant number of changes made from the text of the proposed regulations. The remainder of the proposed regulations under section 2056A have been adopted as final regulations in TD 8612.

Under § 20.2056A–2(d)(1) of the proposed regulations, if the fair market value of the assets of the QDOT at the death of the decedent exceeds $2 million, the trust instrument must require that: (1) At least one trustee be a bank as defined in section 581 or (2) the trustee furnish a bond or security to the IRS in an amount equal to 65 percent of the fair market value of the trust corpus, determined as of the date of the decedent's death. The proposed regulations further provide that if the fair market value of the QDOT assets at the date of the decedent's death is $2 million or less, the QDOT need not meet the ''bank'' or ''bond'' requirement if, as an alternative, the trust instrument expressly provides that no more than 35 percent of the fair market value of the trust assets, determined annually, may be invested in real property that is not located in the United States.

Numerous comments were received regarding these additional regulatory requirements for qualification as a QDOT. Several commentators suggested that requiring the estate to post a bond or appoint a bank as trustee in all cases where trust assets exceed $2 million imposed a burden on these trusts that was expensive and unnecessary. These commentators indicated that the Service's interest in ensuring collection of the section 2056A estate tax would be adequately protected, regardless of the value of the QDOT assets, if either a bank is acting as a trustee, the estate posts a bond, or the trust instrument prohibits investment in foreign real property in excess of the permissible limits. Thus, in the view of these commentators, a trust consisting entirely of liquid assets, regardless of value, would require no special security mechanisms to ensure collection of the section 2056A estate tax (inasmuch as the QDOT would not own any foreign real property). These recommendations have not been adopted.

The temporary regulations generally retain the framework contained in the proposed regulations. The legislative history underlying the enactment of section 2056A expresses Congress' concerns regarding the ability to collect the section 2056A estate tax and contains a clear directive to require appropriate security mechanisms to ensure collection. H.R. Rep. No. 795, 100th Cong. 2d Sess. 592 (July 26, 1988). Thus, the provisions in the proposed regulations requiring a surety arrangement or a bank trustee if the trust is sufficiently large, or contains significant foreign real property, have been retained, because it is believed that these requirements best effectuate the Congressional mandate. With respect to such QDOTs, collection of the section 2056A estate tax can not be adequately assured in the absence of special security measures. Further, it is believed that the $2 million threshold for imposing additional security requirements equitably balances the interests of the Government with the financial constraints of smaller QDOTs.

However, many revisions have been made in the temporary regulations that are intended to provide flexibility and guidance and to alleviate any undue burden attributable to the special security requirements.

In response to comments that the bank trustee provision contained in § 20.2056A–2(d)(1)(i)(A) of the proposed regulations (requiring a bank described in section 581 to act as the U.S. Trustee) discriminates against foreign banks, the temporary regulations provide that a United States branch of a foreign bank may satisfy the bank trustee requirement, provided that the trust instrument names at least one United States Trustee to serve as co-trustee of the QDOT at all times during the administration of the QDOT.

Another commentator suggested that an individual attorney be authorized to act as the U.S. Trustee in lieu of a United States bank in order to satisfy the ''bank trustee'' requirement. The comment reflects a historical practice in certain localities of an attorney serving as professional trustee of substantial trusts with the backing of the financial resources of the attorney's law firm. This alternative proposal is not incorporated in the temporary regulations. Under the procedures provided in § 20.2056A–2T(d)(4), the IRS is considering whether an arrangement may qualify as an alternate security arrangement where an attorney (or firm) actively engaged in the administration of estates and trusts acts as trustee and has individually, and with the other members of the attorney's firm, sufficient assets under management. During the period prior to the publication of guidance in the Internal Revenue Bulletin regarding alternate plans or arrangements, the IRS will accept letter ruling requests as to suitable alternate arrangements.

Section 20.2056A–2(d)(2) of the proposed regulations provides that if the U.S. Trustee is an individual United States citizen, the individual must have a tax home, as defined in section 911(d)(3), in the United States. Comments have been received suggesting that this requirement should be deleted since many attorneys, executives, and other individuals that would be willing to serve as the U.S. Trustee are resident abroad in the conduct of their business. This change has not been made. In order to assure collection of the section 2056A estate tax, the U.S. Trustee must be subject to United States judicial process at all times during the administration of the trust.

The sections of the proposed regulations discussing security arrangements with respect to QDOTs in excess of $2 million have been

substantially modified in the temporary regulations. As noted above, the proposed regulations provided for the posting of a bond as an alternative to employing a bank as the QDOT U.S. Trustee. However, it was recognized that in certain situations, because of statutory restrictions and logistical concerns with monitoring cancellation of the surety arrangement, other security arrangements might be more desirable.

Accordingly, to address these concerns § 20.2056A–2T(d)(1)(i)(C) specifically authorizes letters of credit, in lieu of providing a bank trustee or bond, as a permissible security arrangement. The letter of credit may be issued by a bank described in section 581 or a U.S. branch of a foreign bank. Alternatively, the letter of credit may be issued by a foreign bank and confirmed by a bank described in section 581. Section 20.2056A–2T(d)(1)(i) (B) and (C) contain specific guidelines outlining the terms of the bond and letter of credit required, and provide a sample format for each. In general, the bond or letter of credit must be for a term of at least one year and must be automatically renewable at the expiration of the term, on an annual basis thereafter, unless the IRS is notified at least 60 days prior to the expiration of the term (including periods of automatic renewals) that the security will not be renewed. The IRS will treat the notice of failure to renew as a taxable event and draw on the instrument, unless an alternative form of security is substituted.

Further, under the temporary regulations, if the bond or letter of credit security arrangement is used, the QDOT must provide that if the IRS draws on the bond or letter of credit, neither the U.S. Trustee nor any other person will seek a return of the funds until after April 15th of the following calendar year, the date the Form 706QDT reporting a taxable event would ordinarily be due. This requirement is intended to ensure that the IRS will be able to retain any funds drawn upon since, after the due date of the return, the IRS would have the ability to make a jeopardy assessment under section 6861, if appropriate. The IRS is contemplating the development of internal procedures whereby the taxpayer may request review of the IRS's decision to draw upon the bond or letter of credit. In addition, prior to drawing on the bond or letter of credit, the IRS will make every effort to contact the parties to verify that the action is appropriate under the circumstances.

In addition, if the bond or letter of credit security arrangement is employed, and if it is finally determined that the fair market value of the QDOT assets is in excess of the value as originally reported on the return, then the U.S. Trustee is accorded a reasonable period of time to increase the bond or letter of credit to the requisite amount. However, § 20.2056A–2T(d)(1)(i)(D) provides that if the QDOT assets are undervalued by 50 percent or more, the marital deduction will be disallowed unless a good faith reasonable cause standard is satisfied. This provision ensures that the QDOT will be adequately secured and discourages egregious undervaluations of the QDOT assets. A similar rule is provided in § 20.2056A–2T(d)(1)(ii) with respect to the $2 million threshold for providing additional security arrangements.

Comments were received suggesting that, for purposes of determining the $2 million threshold under § 20.2056A–2(d)(1) of the proposed regulations, the value of the surviving spouse's residence should be excluded. It has also been suggested that the surviving spouse's residence be excluded from both the bond and the foreign real property requirements of the regulations. It is recognized that if a significant portion of the trust value consists of the surviving spouse's principal residence, an asset that will normally generate no income, the costs associated with the posting of the bond, providing a letter of credit or employing an institutional trustee to manage the trust's assets may be burdensome. However, in cases involving any real property, regardless of use, situated outside the United States, a significant collection risk is presented in the absence of the additional security measures required under the regulations.

Accordingly, § 20.2056A–2T(d)(1)(iii) provides that the value (measured at the decedent's death) attributable to the surviving spouse's principal residence (within the meaning of section 1034) wherever situated (and related furnishings), up to an aggregate value of $600,000, may be excluded for purposes of determining if the $2 million threshold is exceeded. In addition, the temporary regulations provide that the value of the principal residence (and related furnishings), wherever situated, up to an aggregate value of $600,000, may be excluded for purposes of determining the amount of the bond or letter of credit (if required). However, the value of the principal residence (and related furnishings) will continue to be included in determining, with respect to QDOTs of less than $2 million, whether the 35 percent foreign real property threshold under § 20.2056A–2T(d)(1)(ii) has been exceeded.

Under § 20.2056A–2T(d)(1)(iii), the term *related furnishings* includes standard furniture and commonly included items such as appliances, fixtures, decorative items, and china, that are not beyond the value associated with normal household and decorative use. Rare artwork, valuable antiques, and automobiles of any kind or class, are not included within the meaning of this term. Further, the principal residence exclusion ceases to apply if the property ceases to be used as a principal residence, or the residence is sold and the ''adjusted sales price'' (as defined in section 1034(b)(1)) is not reinvested within twelve months thereafter in another principal residence. If the principal residence exclusion applies, the U.S. Trustee must file an annual statement as provided in § 20.2056A–2T(d)(3). Upon cessation of qualification for the exclusion, the U.S. Trustee must, within 120 days thereafter, bring the trust into full compliance with § 20.2056A–2T(d)(1) (i) or (ii), whichever is applicable (determined as if the principal residence exclusion had not been applicable to the estate).

Section 20.2056A–2T(d)(1)(ii) clarifies that the $2 million threshold is determined without regard to any indebtedness with respect to the assets comprising the QDOT. It is not necessary to know at the time a QDOT agreement is executed whether the QDOT will exceed the $2 million threshold or whether the QDOT will be $2 million or less and thus eligible to meet the 35 percent foreign real property requirement. A QDOT agreement will satisfy the requirements of the temporary regulations by stating the regulations' requirements in the alternative and leaving the determination as to which requirements apply to the particular QDOT to be determined at the date of death (or the alternate valuation date, if applicable).

In response to comments, the look-through rule contained in § 20.2056A–2(d)(1)(ii)(B) of the proposed regulations has been revised to apply only to trusts with less than $2 million in assets that seek QDOT qualification by satisfying the 35 percent foreign real property requirement, (as opposed to posting a bond or providing a letter of credit, or utilizing a bank trustee). The look-through rule will not apply if an alternative security arrangement is provided.

A comment was made that the look-through rule should only apply when a QDOT that owns stock in a corporation with 15 or fewer shareholders, or an interest in a partnership with 15 or fewer partners, has a controlling interest

in the entity. This suggestion has not been adopted. The regulation focuses on the number of shareholders or partners in the entity because the fewer the number of shareholders or partners, the more likely that the entity may be a family holding company created for the purpose of avoiding the QDOT security rules. The control that the QDOT may be able to exert over the entity is not the primary concern. However, a *de minimis* rule is adopted to avoid application of the look-through rule under certain circumstances. Accordingly, the temporary regulations provide that the look-through rule only applies if the QDOT owns (including interests that it is deemed to own) more than 20% of the voting interest or value in the corporation or more than a 20% capital interest in the partnership.

Comments were received that the anti-abuse rule contained in § 20.2056A–2(d)(1)(iii) of the proposed regulations was overly broad. It has been determined that the breadth of the rule is necessary to ensure collection of the tax and, therefore, the rule as proposed is not modified.

Comments have been received recommending elimination of the rule under § 20.2056A–2(d)(3) of the proposed regulations, requiring that personal property and written evidence of intangible personal property must be physically located in the United States at all times during the term of the QDOT. These comments noted that domestic brokerage companies often provide for custody of foreign securities outside of the United States to facilitate sale of the securities. This practice would make it difficult, if not impossible, for QDOTs to comply with the intangible personal property rule. In light of these comments, the requirement that tangible and intangible personal property be located in the United States has been deleted from the temporary regulations.

Section 20.2056A–2(d)(4) of the proposed regulations requires the U.S. Trustee to file an annual statement with the IRS providing certain information and summarizing the assets held by the QDOT and the fair market value of each asset. Comments were received recommending that the annual statement requirement should not apply if the bank or bond requirement is satisfied. Additionally, the commentators recommended that annual filing should be required only if the QDOT holds foreign real property.

After fully considering these comments, it was determined that modifications to the annual reporting requirement were warranted. Under § 20.2056A–2T(d)(3), the annual statement is required to be filed only in cases where: (1) The QDOT directly (before application of the look-through rule) owns foreign real property (unless the bank, bond, or letter of credit security requirement is met); (2) the principal residence exclusion applies, regardless of the situs of the residence or whether the bank, bond, or letter of credit requirement is met; or (3) after applying the look-through rule (as limited in application by the temporary regulations), the QDOT is treated as owning any foreign real property. Additional rules apply if the principal residence exclusion ceases to apply or the residence is sold. In addition, the temporary regulations have been modified to provide that the annual statement is to be filed with the Form 706–QDT rather than with the Form 1041 as provided in the proposed regulations. This change was necessary because not all QDOTs are required to file Form 1041.

Comments have also been received recommending that the IRS provide specific examples of acceptable alternate arrangements and situations justifying a waiver under § 20.2056A–2(d)(5) of the proposed regulations. The IRS intends to provide guidance to be published in the Internal Revenue Bulletin on this subject. As noted above, until such guidance is published, the IRS will accept requests for letter rulings on acceptable alternate arrangements.

In general, these regulations are effective with respect to estates of decedents dying after the date that is 180 days after the date these regulations are published in the **Federal Register**. In order for a trust subject to these regulations to qualify as a QDOT, the trust must contain the governing instrument requirements of § 20.2056A–2T(d)(1) (i) and (ii) at the time of death, or be reformed, pursuant to the terms of the governing instrument, or judicially under section 2056(d)(5). However, in response to comments, special transitional rules in the case of incompetency and in the case of certain irrevocable trusts have been added pursuant to which a trust is deemed to meet the governing instrument requirements of § 20.2056A–2T(d)(1) (i) and (ii) even though such requirements are not contained in the governing instrument, providing certain requirements are met.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Susan Hurwitz, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

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

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

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

Par. 2. Section 20.2056A–2T is added to read as follows:

§ 20.2056A–2T Requirements for qualified domestic trust (temporary).

(a) through (c) [Reserved] For further guidance see § 20.2056A–2 (a) through (c).

(d) *Additional requirements to ensure collection of the section 2056A estate tax*—(1) *Security and other arrangements for payment of estate tax imposed under section 2056A(b)(1)*—(i) *QDOTs with assets in excess of $2 million.* If the fair market value of the assets passing, treated, or deemed to have passed to the QDOT (or in the form of a QDOT), determined without reduction for any indebtedness with respect to the assets, as finally determined for federal estate tax purposes, exceeds $2 million as of the date of the decedent's death or, if applicable, the alternate valuation date

(adjusted as provided in paragraph (d)(1)(iii) of this section), the trust instrument must meet the requirements of either paragraph (d)(1)(i) (A), (B), or (C) of this section at all times during the term of the QDOT. The QDOT may alternate between any of the arrangements provided in paragraphs (d)(1)(i) (A), (B), and (C) of this section provided that, at any given time, at least one of the arrangements is in effect.

(A) *Bank Trustee.* Except as otherwise provided in paragraph (d)(6) (ii) or (iii) of this section, the trust instrument must require that during the entire term of the QDOT, at least one U.S. Trustee be a bank, as defined in section 581. Alternatively, the trust instrument must, except as otherwise provided in paragraph (d)(6) (ii) or (iii) of this section, require that during the entire term of the QDOT, at least one trustee be a United States branch of a foreign bank, provided that the trust instrument must also require that, during the entire term of the QDOT, a U.S. Trustee act as a trustee with such foreign bank trustee.

(B) *Bond.* Except as otherwise provided in paragraph (d)(6)(ii) or (iii) of this section, the trust instrument must require that the U.S. Trustee furnish a bond in favor of the Internal Revenue Service in an amount equal to 65 percent of the fair market value of the trust assets (without regard to any indebtedness thereon) as of the date of the decedent's death (or alternate valuation date, if applicable), as finally determined for federal estate tax purposes (and as further adjusted as provided in paragraph (d)(1)(iii) of this section). If, after examination of the estate tax return, the fair market value of the trust assets, as originally reported on the estate tax return, is adjusted (pursuant to a judicial proceeding or otherwise) resulting in a final determination of the value of the assets as reported on the return, the U.S. Trustee shall have a reasonable period of time (not exceeding sixty days after the conclusion of the proceeding or other action resulting in a final determination of the value of the assets) to adjust the amount of the bond accordingly. But see, paragraph (d)(1)(i)(D) of this section for a special rule in the case of a substantial undervaluation of QDOT assets. Unless an alternate arrangement under paragraph (d)(1)(i) (A), (B), or (C) of this section, or an arrangement prescribed under paragraph (d)(4) of this section, is provided, or the trust is otherwise no longer subject to the requirements of section 2056A pursuant to section 2056A(b)(12), the bond must remain in effect until the termination of the trust and the payment of any tax liability finally determined to be due under section 2056A(b).

(*1*) *Requirements with respect to the bond.* The bond must be with a satisfactory surety, as prescribed under section 7101 and § 301.7101–1 of this chapter (Regulations on Procedure and Administration), and shall be subject to Internal Revenue Service review as may be prescribed by the Commissioner. The bond may not be cancelled. The bond must be for a term of at least one year and must be automatically renewable at the end of such term, on an annual basis thereafter, unless notice of failure to renew is received by the IRS at least 60 days prior to the end of the term, including periods of automatic extensions. Any notice of failure to renew must be sent to the Estate and Gift Tax Group in the District Office of the Internal Revenue Service that has examination jurisdiction over the decedent's estate (Internal Revenue Service, District Director, [*specify location*] District Office, Estate and Gift Tax Examination Group, [specify Street Address, City, State, Zip Code]) (or in the case of noncitizen decedents and United States citizens who die domiciled outside the United States, Estate and Gift Tax Examination Group, Assistant Commissioner (International), CP:IN:D:C:EX:HQ:1114, Washington, DC 20024). The Service will not draw on the bond if, within 30 days of receipt of the notice of failure to renew, the U.S. Trustee notifies the Service (at the same address to which notice of failure to renew is to be sent) that an alternate arrangement under paragraphs (d)(1)(i)(A), (B), or (C) of this section has been secured and that such arrangement will take effect immediately prior to or upon expiration of the bond.

(*2*) *Form of bond.* The bond must be in the following form (or in a form that is the same as the following form in all material respects), or in such alternative form as the Commissioner may prescribe by guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter):

Bond in Favor of the Internal Revenue Service To Secure Payment of Section 2056A Estate Tax Imposed Under Section 2056A(b) of the Internal Revenue Code.

KNOW ALL PERSONS BY THESE PRESENTS, That the undersigned, _____, the SURETY, and _____, the PRINCIPAL, are irrevocably held and firmly bound to pay the Internal Revenue Service upon written demand that amount of any tax up to *$[amount determined under paragraph (d)(1)(i)(B) of this section],* imposed under section 2056A(b)(1) of the Internal Revenue Code (including penalties and interest on said tax) determined by the Internal Revenue Service to be payable with respect to the principal as trustee for: *[Identify trust and governing instrument, name and address of trustee],* a qualified domestic trust as defined in section 2056A(a) of the Internal Revenue Code, for the payment of which the said Principal and said Surety, bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Internal Revenue Service may demand payment under this bond at any time if the Internal Revenue Service in its sole discretion determines that a taxable event with respect to the trust has occurred; the trust no longer qualifies as a qualified domestic trust as described in section 2056A(a) of the Internal Revenue Code and the regulations promulgated thereunder, or a distribution subject to the tax imposed under section 2056A(b)(1) has been made. Demand by the Internal Revenue Service for payment may be made whether or not the tax and tax return (Form 706–QDT) with respect to the taxable event is due at the time of such demand, or an assessment has been made by the Internal Revenue Service with respect to such tax.

NOW THEREFORE, The condition of this obligation is such that it shall not be cancelled and, if payment of all tax liability finally determined to be imposed under section 2056A(b) is made, then this obligation shall be null and void; otherwise, this obligation is to remain in full force and effect for one year from its effective date and is to be automatically renewable on an annual basis unless, at least 60 days prior to the expiration date, including periods of automatic renewals, the surety notifies the Internal Revenue Service by Registered or Certified Mail, return receipt requested, of such failure to renew. Receipt of such notice of failure to renew may be considered a taxable event unless an alternate security arrangement is obtained by the trustee prior to the date of expiration and the Trustee notifies the Internal Revenue Service of such alternate security arrangement. The surety shall remain liable for all taxable events occurring prior to the date of expiration. All notices required under this instrument should be sent to District Director, [*specify location*] District Office, Estate and Gift Tax Examination Group, Street Address, City, State, Zip Code. (In the case of nonresident noncitizen decedents and United States citizens who die domiciled outside the United States, all notices should be sent to Estate and Gift Tax Examination Group, Assistant Commissioner (International), CP:IN:D:C:EX:HQ:1114, Washington, DC 20024).

This bond shall be effective as of _____.

Principal _____

Date _____

Surety _____

Date _____

(*3*) *Additional governing instrument requirements.* The trust instrument must also provide that in the event the Internal Revenue Service draws on the bond, in accordance with its terms, neither the U.S. Trustee nor any other

person will seek a return of any part of the remittance until April 15th of the calendar year following the year in which the bond is drawn upon. After such date, any such remittance will be treated as a deposit and will be returned (without interest) upon request of the U.S. Trustee, unless it is determined that assessment or collection of the tax imposed by section 2056A(b)(1) is in jeopardy, within the meaning of section 6861. If an assessment under section 6861 is made, the remittance will first be credited to any tax liability reported on the Form 706–QDT, then to any unpaid balance of a section 2056A(b)(1)(A) tax liability (plus interest and penalties) for any prior taxable years, and any balance will then be returned to the U.S. Trustee.

(*4*) *Procedure.* The bond is to be filed with the decedent's federal estate tax return, Form 706 or 706NA (unless an extension for filing the bond is granted under § 301.9100 of this chapter. The U.S. Trustee must provide a written statement with the bond that provides a list of the assets that will be used to fund the QDOT and the respective values of such assets. The written statement must also indicate whether any exclusions under paragraph (d)(1)(iii) of this section are claimed.

(C) *Letter of credit.* Except as otherwise provided in paragraph (d)(6)(ii) or (iii) of this section, the trust instrument must require that the U.S. Trustee furnish an irrevocable letter of credit issued by a bank, as defined in section 581, issued by a United States branch of a foreign bank, or issued by a foreign bank and confirmed by a bank as defined in section 581, in an amount equal to 65 percent of the fair market value of the trust assets (without regard to any indebtedness thereon) as of the date of the decedent's death (or alternate valuation date, if applicable), as finally determined for federal estate tax purposes (and as further adjusted as provided in paragraph (d)(1)(iii) of this section). If, after examination of the estate tax return, the fair market value of the trust assets, as originally reported on the estate tax return, is adjusted (pursuant to a judicial proceeding or otherwise) resulting in a final determination of the value of the assets as reported on the return, the U.S. Trustee shall have a reasonable period of time (not exceeding 60 days after the conclusion of the proceeding or other action resulting in a final determination of the value of the assets) to adjust the amount of the letter of credit accordingly. But see, paragraph (d)(1)(i)(D) of this section for a special rule in the case of a substantial undervaluation of QDOT assets. Unless an alternate arrangement under paragraph (d)(1)(i) (A), (B), or (C) of this section, or an arrangement prescribed under paragraph (d)(4)of this section, is provided, or the trust is otherwise no longer subject to the requirements of section 2056A pursuant to section 2056A(b)(12), the letter of credit must remain in effect until the termination of the trust and the payment of any tax liability finally determined to be due under section 2056A(b).

(*1*) *Requirements with respect to letter of credit.* The letter of credit shall be irrevocable and provide for sight payment. The letter of credit must be for a term of at least one year and must be automatically renewable at the end of such term, at least on an annual basis, unless notice of failure to renew is received by the Internal Revenue Service at least sixty days prior to the end of the term, including periods of automatic renewals. If the letter of credit is issued by the U.S. branch of a foreign bank and such U.S. branch is closing, the branch (or foreign bank) must notify the Internal Revenue Service of such closure and the notice of closure must be received at least 60 days prior to the date of closure. Any notice of failure to renew or closure of a U.S. branch of a foreign bank must be sent to the Estate and Gift Tax Group in the District Office of the Internal Revenue Service that has examination jurisdiction over the decedent's estate (Internal Revenue Service, District Director, (*specify location*) District Office, Estate and Gift Tax Examination Group, [Street Address, City State, Zip Code]) (or in the case of noncitizen decedents and United States citizens who die domiciled outside the United States, Estate and Gift Tax Examination Group, Assistant Commissioner (International), CP:IN:D:C:EX:HQ:1114, Washington, DC 20024). The Internal Revenue Service will not draw on the letter of credit if, within 30 days of receipt of the notice of failure to renew or closure of the U.S. branch of a foreign bank, the U.S. Trustee notifies the Service (at the same address to which notice is to be sent) that an alternate arrangement under paragraph(d)(1)(i) (A), (B), or (C) of this section has been secured and that such arrangement will take effect immediately prior to or upon expiration of the letter of credit or closure of the U.S. branch of the foreign bank.

(*2*) *Form of letter of credit.* The letter of credit shall be made in the following form (or in a form that is the same as the following form in all material respects), or such alternative form as the Commissioner may prescribe by guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter):

[Issue Date]

To: Internal Revenue Service
Attention: District Director, *[specify location]* District Office Estate and Gift Tax Examination Group [Street Address, City, State, ZIP Code]
[Or in the case of nonresident noncitizen decedents and United States citizens who die domiciled outside the United States,
To: Estate and Gift Tax Examination Group, Assistant Commissioner (International) CP:IN:D:C:EX:HQ:1114 Washington, DC 20024].

Dear Sirs: We hereby establish our irrevocable Letter of Credit No. _____in your favor for drawings up to U.S. § [*Applicant should provide bank with amount which Applicant determined under paragraph (d)(1)(i)(C)*] effective immediately. This Letter of Credit is issued, presentable and payable at our office at _____ and expires at 3:00 p.m. [EDT, EST, CDT, CST, MDT, MST, PDT, PST] on _____ at said office.

For information and reference only, we are informed that this Letter of Credit relates to [*Applicant should provide bank with the identity of qualified domestic trust and governing instrument*], and the name, address, and identifying number of the trustee is [*Applicant should provide bank with the trustee name, address and the QDOT's TIN number, if any*].

Drawings on this Letter of Credit are available upon presentation of the following documents:

1. Your draft drawn at sight on us bearing our Letter of Credit No. _____; and

2. Your signed statement as follows:

The amount of the accompanying draft is payable under [*identify bank*] irrevocable Letter of Credit No. _____ pursuant to section 2056A of the Internal Revenue Code and the regulations promulgated thereunder, because the Internal Revenue Service in its sole discretion has determined that a ''taxable event'' with respect to the trust has occurred; e.g., the trust no longer qualifies as a qualified domestic trust as described in section 2056A of the Internal Revenue Code and regulations promulgated thereunder, or a distribution subject to the tax imposed under section 2056A(b)(1) of the Internal Revenue Code has been made.

Except as expressly stated herein, this undertaking is not subject to any agreement, requirement or qualification. The obligation of [*Name of Issuing Bank*] under this Letter of Credit is the individual obligation of [*Name of Issuing Bank*] and is in no way contingent upon reimbursement with respect thereto.

It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for a period of one year from the expiry date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we send to you notice by Registered Mail or Certified Mail, return receipt requested, or by courier to your address indicated above, that we elect not to consider this Letter of Credit renewed for any

such additional period. Upon receipt of such notice, you may draw hereunder on or before the then current expiration date, by presentation of your draft and statement as stipulated above.

In the case of a letter of credit issued by a U.S. branch of a foreign bank the following language must be added]. It is a further condition of this Letter of Credit that if the U.S. branch of [*name of foreign bank*] is to be closed, that at least sixty days prior to such closing, we send you notice by Registered Mail or Certified Mail, return receipt requested, or by courier to your address indicated above, that this branch will be closing. Such notice will specify the actual date of closing. Upon receipt of such notice, you may draw hereunder on or before the date of closure, by presentation of your draft and statement as stipulated above.

Except where otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500. If we notify you of our election not to consider this Letter of Credit renewed and the expiration date occurs during an interruption of business described in Article 17 of said Publication 500, unless you had consented to cancellation prior to the expiration date, the bank hereby specifically agrees to effect payment if this Letter of Credit is drawn against within 30 days after the resumption of business.

Except as stated herein, this Letter of Credit cannot be modified or revoked without your consent.

Authorized Signature _____

Date _____

(*3*) *Form of confirmation.* If the requirements of this paragraph (d)(1)(i)(C) are satisfied by the issuance of a letter of credit by a foreign bank confirmed by a bank as defined in section 581, the confirmation shall be made in the following form (or in a form that is the same as the following form in all material respects), or such alternative form as the Commissioner may prescribe by guidance published in the Internal Revenue Bulletin:

[Issue Date]

To: Internal Revenue Service
Attention: District Director, [*specify location*] District Office, Estate and Gift Tax Examination Group [State Address, City, State, ZIP Code]

[or in the case of nonresident noncitizen decedents and United States citizens who die domiciled outside the United States,

To: Estate and Gift Tax Examination Group, Assistant Commissioner (International) CP:IN:D:C:EX:HQ:1114 Washington, DC 20024].

Dear Sirs: We hereby confirm the enclosed irrevocable Letter of Credit No. _____, and amendments thereto, if any, in your favor by _____ [Issuing Bank] for drawings up to U.S. $_____ [same amount as in initial Letter of Credit] effective immediately. This confirmation is issued, presentable and payable at our office at _____ and expires at 3:00 p.m. [EDT, EST, CDT, CST, MDT, MST, PDT, PST] on _____ at said office.

For information and reference only, we are informed that this Confirmation relates to [Applicant should provide bank with the identity of qualified domestic trust and governing instrument], and the name, address, and identifying number of the trustee is [Applicant should provide bank with the trustee name, address and the QDOT's TIN number, if any].

We hereby undertake to honor your sight draft(s) drawn as specified in the Letter of Credit.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [*Name of Confirming Bank*] under this Confirmation is the individual obligation of [*Name of Confirming Bank*] and is in no way contingent upon reimbursement with respect thereto.

It is a condition of this Confirmation that it is deemed to be automatically extended without amendment for a period of one year from the expiry date hereof, or any future expiration date, unless at least sixty days prior to any expiration date, we send to you notice by Registered Mail or Certified Mail, return receipt requested, or by courier to your address indicated above, that we elect not to consider this Confirmation renewed for any such additional period. Upon receipt of such notice, you may draw hereunder on or before the then current expiration date, by presentation of your draft and statement as stipulated above.

Except where otherwise stated herein, this Confirmation is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500. If we notify you of our election not to consider this Confirmation renewed and the expiration date occurs during an interruption of business described in Article 17 of said Publication 500, unless you had consented to cancellation prior to the expiration date, the bank hereby specifically agrees to effect payment if this Confirmation is drawn against within 30 days after the resumption of business.

Except as stated herein, this Confirmation cannot be modified or revoked without your consent.

Authorized Signature _____

Date _____

(*4*) *Additional governing instrument requirements.* The trust instrument must also provide that in the event that the Internal Revenue Service draws on the letter of credit (or confirmation) in accordance with its terms, neither the U.S. Trustee nor any other person will seek a return of any part of the remittance until April 15th of the calendar year following the year in which the letter of credit (or confirmation) is drawn upon. After such date, any such remittance will be treated as a deposit and will be returned (without interest) upon request of the U.S. Trustee after the date specified above, unless it is determined that assessment or collection of the tax imposed by section 2056A(b)(1) is in jeopardy, within the meaning of section 6861. If an assessment under section 6861 is made, the remittance will first be credited to any tax liability reported on the Form 706–QDT, then to any unpaid balance of a section 2056A(b)(1)(A) tax liability (plus interest and penalties) for any prior taxable years, and any balance will then be returned to the U.S. Trustee.

(*5*) *Procedure.* The letter of credit (and confirmation, if applicable) is to be filed with the decedent's federal estate tax return, Form 706 or 706NA (unless an extension for filing the letter of credit is granted under § 301.9100 of this chapter). The U.S. Trustee must provide a written statement with the letter of credit that provides a list of the assets that will be used to fund the QDOT and the respective values of such assets. The written statement must also indicate whether any exclusions under paragraph (d)(1)(iii) of this section are claimed.

(D) *Disallowance of marital deduction in case of substantial undervaluation of QDOT property in certain situations.* (*1*) If either—

(*i*) The bond or letter of credit security arrangement under paragraph (d)(1)(i)(B) or (C) of this section is chosen by the U.S. Trustee; or

(*ii*) The QDOT property as originally reported on the decedent's estate tax return is valued at $2 million or less but, as finally determined for federal estate tax purposes, the QDOT property is determined to be in excess of $2 million, then the marital deduction will be disallowed in its entirety for failure to comply with the requirements of section 2056A if the value of the QDOT property reported on the estate tax return is 50 percent or less of the amount finally determined to be the correct value of such property for federal estate tax purposes.

(*2*) The preceding sentence shall not apply if—

(*i*) There was reasonable cause for such undervaluation; and

(*ii*) The fiduciary of the estate acted in good faith with respect to such undervaluation. For this purpose, § 1.6664–4(b) of this chapter applies, to the extent applicable, with respect to the facts and circumstances to be taken into account in making this determination.

(ii) *QDOTs with assets of $2 million or less.* If the fair market value of the assets passing, treated, or deemed to have passed to the QDOT (or in the form of a QDOT), determined without reduction for any indebtedness with respect to the assets, as finally

determined for federal estate tax purposes, is $2 million or less as of the date of the decedent's death or, if applicable, the alternate valuation date (adjusted as provided in paragraph (d)(1)(iii) of this section), the trust instrument must require that no more than 35 percent of the fair market value of the trust assets, determined annually on the last day of the taxable year of the trust (or on the last day of the calendar year if the QDOT does not have a taxable year), may consist of real property located outside of the United States, or the trust must meet the requirements prescribed by paragraph (d)(1)(i) (A), (B), or (C) of this section. See paragraph (d)(1)(ii)(D) of this section for special rules in the case of principal distributions from a QDOT and fluctuations in the value of the foreign real property held by a QDOT due to changes in value of foreign currency. See paragraph (d)(1)(iii) of this section for a special rule for principal residences. If the fair market value, as originally reported on the decedent's estate tax return, of the assets passing or deemed to have passed to the QDOT (determined without reduction for any indebtedness with respect to the assets) is $2 million or less, but the fair market value of the assets as finally determined for federal estate tax purposes is more than $2 million, the U.S. Trustee shall have a reasonable period of time (not exceeding sixty days after the conclusion of the proceeding or other action resulting in a final determination of the value of the assets) to meet the requirements prescribed by paragraph (d)(1)(i) (A), (B), or (C) of this section. However, see paragraph (d)(1)(i)(D) of this section in the case of a substantial undervaluation of QDOT assets.

(A) *Multiple QDOTs.* For purposes of this paragraph (d)(1)(ii), if more than one QDOT is established for the benefit of the surviving spouse, the fair market value of all the QDOTs are aggregated in determining whether the $2 million threshold under this paragraph (d)(1)(ii) is exceeded.

(B) *Look-through rule.* For purposes of determining whether no more than 35 percent of the fair market value of the QDOT assets consists of foreign real property, if the QDOT owns more than 20% of the voting stock or value in a corporation with 15 or fewer shareholders, or more than 20% of the capital interest of a partnership with 15 or fewer partners, then all assets owned by the corporation or partnership are deemed to be owned directly by the QDOT to the extent of the QDOT's pro rata share of the assets of that corporation or partnership. In the case of a partnership, the QDOT partner's pro rata share shall be based on the greater of its interest in the capital or profits of the partnership. For purposes of this paragraph, all stock in the corporation, or interests in the partnership, as the case may be, owned by or held for the benefit of the surviving spouse, or any members of the surviving spouse's family (within the meaning of section 267(c)(4)), are treated as owned by the QDOT solely for purposes of determining the number of partners or shareholders in the entity and the QDOT's percentage voting interest or value in the corporation or capital interest in the partnership, but not for the purpose of determining the QDOT's pro rata share of the assets of the entity.

(C) *Interests in other entities.* Interests owned by the QDOT in other entities (such as an interest in a trust) are accorded treatment consistent with that described in paragraph (d)(1)(ii)(B) of this section.

(D) *Special rule for foreign real property.* For purposes of this paragraph (d)(1)(ii), if, on the last day of any taxable year during the term of the QDOT (or the last day of the calendar year if the QDOT does not have a taxable year), the value of foreign real property owned by the QDOT exceeds 35 percent of the fair market value of the trust assets due to distributions of QDOT principal during that year or because of fluctuations in the value of the foreign currency in the jurisdiction where the real estate is located, the QDOT will not be treated as failing to meet the requirements of paragraph (d)(1) of this section and, therefore, will not cease to be a QDOT within the meaning of § 20.2056A–5(b)(3) if, by the end of the taxable year (or the last day of the calendar year if the QDOT does not have a taxable year) of the QDOT immediately following the year in which the 35 percent limit was exceeded, the value of the foreign real property held by the QDOT does not exceed 35 percent of the fair market value of the trust assets or, alternatively, the QDOT meets the requirements of either paragraph (d)(1)(i) (A), (B), or (C) of this section on or before the close of that succeeding year.

(iii) *Special rules for principal residence and related personal effects*—(A) *Two million dollar threshold.* For purposes of determining whether the $2 million threshold under paragraphs (d)(1) (i) and (ii) of this section has been exceeded, the executor of the estate may elect to exclude up to $600,000 in value attributable to real property wherever situated (and related furnishings) owned directly by the QDOT that is used by the surviving spouse as the spouse's principal residence and that passes, or is treated as passing, to the QDOT under section 2056(d). The election is made by attaching a written statement claiming the exclusion to the estate tax return on which the QDOT election is made.

(B) *Security requirement.* For purposes of determining the amount of the bond or letter of credit required in cases where paragraph (d)(1)(i) (B) or (C) of this section applies, the executor of the estate may elect to exclude, during the term of the QDOT, up to $600,000 in value attributable to real property, wherever situated (and related furnishings) owned directly by the QDOT that is used by the surviving spouse as the spouse's principal residence and that passes, or is treated as passing, to the QDOT under section 2056(d). The election may be made regardless of whether the real property is situated within or without the United States. The election is made by attaching to the estate tax return on which the QDOT election is made a written statement claiming the exclusion.

(C) *Foreign real property limitation.* The special rules of this paragraph (d)(1)(iii) do not apply for purposes of determining whether more than 35 percent of the QDOT assets consist of foreign real property under paragraph (d)(1)(ii) of this section.

(D) *Principal residence.* For purposes of this paragraph (d)(1)(iii), the term *principal residence* has the same meaning as prescribed in section 1034 and the regulations thereunder. A principal residence may include appurtenant structures used by the surviving spouse for residential purposes and adjacent land not in excess of that which is reasonably appropriate for residential purposes (taking into account the residence's size and location).

(E) *Related furnishings.* The term *related furnishings* means furniture and commonly included items such as appliances, fixtures, decorative items and china, that are not beyond the value associated with normal household and decorative use. Rare artwork, valuable antiques, and automobiles of any kind or class are not within the meaning of this term.

(F) *Annual statement.* If one or both of the exclusions provided in paragraph (d)(1)(iii) (A) or (B) of this section are elected by the executor of the estate, the U.S. Trustee must file the statement required under paragraph (d)(3) of this section at the time and in the manner provided in paragraph (d)(3) of this section. In addition, an annual statement must be filed by the U.S. Trustee under the circumstances

described in paragraphs (d)(3)(iii) (C) and (D) of this section.

(G) *Cessation of use.* Except as provided in this paragraph (d)(1)(iii)(G), if the residence ceases to be used as the principal residence of the spouse, or if the residence is sold during the term of the QDOT, the exclusions provided in paragraph (d)(1)(iii) (A) and (B) of this section will cease to apply. However, in the case of such a sale, the exclusions will continue to apply if, within 12 months of the date of sale, the amount of the adjusted sales price (as defined in section 1034(b)(1)) is used to purchase a new principal residence for the spouse. If less than the amount of the adjusted sales price is so reinvested, then the amount of the exclusions initially claimed by the QDOT are reduced proportionately based on the amount of excess adjusted sales price not so reinvested compared to the entire adjusted sales price. If the QDOT ceases to qualify for all or any portion of the initially claimed exclusions, paragraph (d)(1)(i) of this section, if applicable (determined as if the portion of the exclusions disallowed had not been initially claimed by the QDOT), must be complied with no later than 120 days after the effective date of the cessation. The Internal Revenue Service may provide in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) for appropriate exceptions to the cessation of use rule contained in this paragraph (d)(1)(iii) where the principal residence of a surviving spouse is substituted for another principal residence, when both residences are held in a QDOT.

(iv) *Anti-abuse rule.* Regardless of whether the QDOT designates a bank as the U.S. Trustee under paragraph (d)(1)(i)(A) of this section (or otherwise complies with paragraph (d)(1)(i)(A) of this section by naming a foreign bank with a United States branch as a trustee to serve with the U.S. Trustee), complies with paragraph (d)(1)(i) (B) or (C) of this section, or is subject to and complies with the foreign real property requirements of paragraph (d)(1)(ii) of this section, the trust immediately ceases to qualify as a QDOT if the trust utilizes any device or arrangement that has, as a principal purpose, the avoidance of liability for the estate tax imposed under section 2056A(b)(1), or the prevention of the collection of the tax. For example, the trust may become subject to this paragraph (d)(1)(iv) if the U.S. Trustee that is selected is a domestic corporation established with insubstantial capitalization by the surviving spouse or members of the spouse's family.

(2) *Individual trustees.* If the U.S. Trustee is an individual United States citizen, the individual must have a tax home (as defined in section 911(d)(3)) in the United States.

(3) *Annual reporting requirements*—(i) *In general.* The U.S. Trustee must file a written statement described in paragraph (d)(3)(iii) of this section, if the QDOT satisfies any one of the following criteria for the applicable reporting years—

(A) The QDOT directly owns any foreign real property on the last day of its taxable year (or the last day of the calendar year if it has no taxable year), and the QDOT does not satisfy the requirements of paragraph (d)(1)(i) (A), (B), or (C) of this section by employing a bank as trustee or providing security; or

(B) The principal residence exclusion under paragraph (d)(1)(iii) of this section applies during the taxable year (or during the calendar year if the QDOT has no taxable year); or

(C) The principal residence previously subject to the exclusion under paragraph (d)(1)(iii) of this section is sold, or that principal residence ceases to be used as a principal residence, during the taxable year (or during the calendar year if the QDOT does not have a taxable year); or

(D) After the application of the look-through rule contained in paragraph (d)(1)(ii)(B) of this section, the QDOT is treated as owning any foreign real property on the last day of the taxable year (or the last day of the calendar year if the QDOT has no taxable year).

(ii) *Time and manner of filing.* The written statement, containing the information described in paragraph (d)(3)(iii) of this section, is to be filed for the taxable year of the QDOT (calendar year if the QDOT does not have a taxable year) for which any of the events or conditions requiring the filing of a statement under paragraph (d)(3)(i) of this section have occurred or have been satisfied. The written statement is to be submitted to the Internal Revenue Service by filing a Form 706–QDT, with the statement attached, no later than April 15th of the calendar year following the calendar year in which or with which the taxable year of the QDOT ends (or by April 15th of the following year if the QDOT has no taxable year), unless an extension of time is obtained under § 20.2056A–11(a). The Form 706–QDT, with attached statement, must be filed regardless of whether the Form 706–QDT is otherwise required to be filed under the provisions of this chapter. Failure to file timely the statement may subject the QDOT to the rules of paragraph (d)(1)(iv) of this section.

(iii) *Contents of statement.* The written statement must contain the following information—

(A) The name, address, and taxpayer identification number, if any, of the U.S. Trustee and the QDOT; and

(B) A list summarizing the assets held by the QDOT, together with the fair market value of each listed QDOT asset, determined as of the last day of the taxable year (December 31 if the QDOT does not have a taxable year) for which the written statement is filed. If the look-through rule contained in paragraph (d)(1)(ii)(B) of this section applies, then the partnership, corporation, trust or other entity must be identified and the QDOT's pro rata share of the foreign real property and other assets owned by that entity must be listed on the statement as if directly owned by the QDOT; and

(C) If a principal residence previously subject to the exclusion under paragraph (d)(1)(iii) of this section is sold during the taxable year (or during the calendar year if the QDOT does not have a taxable year), the statement must provide the date of sale, the adjusted sales price (as defined in section 1034(b)(1)), the extent to which the amount of the adjusted sales price has been or will be used to purchase a new principal residence and, if not timely reinvested, the steps that will or have been taken to comply with paragraph (d)(1)(i) of this section, if applicable; and

(D) If the principal residence ceases to be used as a principal residence by the surviving spouse during the taxable year (or during the calendar year if the QDOT does not have a taxable year), the written statement must describe the steps that will or have been taken to comply with paragraph (d)(1)(i) of this section, if applicable.

(4) *Request for alternate arrangement or waiver.* If the Commissioner provides guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) pursuant to which a testator, executor, or the U.S. Trustee may adopt an alternate plan or arrangement to assure collection of the section 2056A estate tax, and if such an alternate plan or arrangement is adopted in accordance with such published guidance, then the QDOT will be treated, subject to paragraph (d)(1)(iv) of this section, as meeting the requirements of paragraph (d)(1) of this section. Until such guidance is published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), taxpayers may submit a request for a private letter ruling for the

approval of an alternate plan or arrangement proposed to be adopted to assure collection of the section 2056A estate tax in lieu of the requirements prescribed in this paragraph (d)(4).

(5) *Adjustment of dollar threshold and exclusion.* The Commissioner may increase or decrease the dollar amounts referred to in paragraph (d)(1) (i), (ii) or (iii) of this section in accordance with guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(6) *Effective date and special rules.* (i) This paragraph (d) is effective for estates of decedents dying after March 7, 1996.

(ii) *Special rule in the case of incompetency.* A revocable trust or a trust created under the terms of a will is deemed to meet the governing instrument requirements of this paragraph (d) notwithstanding that such requirements are not contained in the governing instrument, if the trust instrument (or will) was executed on or before November 20, 1995, and—

(A) The testator or settlor dies after March 7, 1996;

(B) The testator or settlor is, on November 20, 1995, and at all times thereafter, under a legal disability to amend the will or trust instrument;

(C) The will or trust instrument does not provide the executor or the U.S. Trustee with a power to amend the instrument in order to meet the requirements of section 2056A; and

(D) The U.S. Trustee provides a written statement with the federal estate tax return (Form 706 or 706NA) that the trust is being administered (or will be administered) so as to be in actual compliance with the requirements of this paragraph (d) and will continue to be administered so as to be in actual compliance with this paragraph (d) for the duration of the trust. This statement must be binding on all successor trustees.

(iii) *Special rule in the case of certain irrevocable trusts.* An irrevocable trust is deemed to meet the governing instrument requirements of this paragraph (d) notwithstanding that such requirements are not contained in the governing instrument if the trust was executed on or before November 20, 1995, and:

(A) The settlor dies after March 7, 1996;

(B) The trust instrument does not provide the U.S. Trustee with a power to amend the trust instrument in order to meet the requirements of section 2056A; and

(C) The U.S. Trustee provides a written statement with the decedent's federal estate tax return (Form 706 or 706NA) that the trust is being administered in actual compliance with the requirements of this paragraph (d) and will continue to be administered so as to be in actual compliance with this paragraph (d) for the duration of the trust. This statement must be binding on all successor trustees.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by adding the entry ''20.2056A–2T(d)—1545–1443'' in numerical order in the table.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 21, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19866 Filed 8–21–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

48 CFR Part 219

Defense Federal Acquisition Regulation Supplement; Evaluation Preference for Small Disadvantaged Business Concerns

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement to state that the evaluation preference for small disadvantaged business concerns shall not be used in acquisitions for long distance telecommunications services.

EFFECTIVE DATE: August 22, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131. Please cite DFARS Case 95–D008.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** at 60 FR 22035 on May 4, 1995. Fourteen comments from eleven respondents were received as a result of the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis has been performed. A copy of the Analysis may be obtained from the individual listed herein.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 219

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 219 is amended as follows:

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for 48 CFR Part 219 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 219.7001 is amended by revising paragraphs (b) (3) and (4) and adding (b)(5) to read as follows:

219.7001 Applicability.

* * * * *

(b) * * *

(3) Are set-aside for small businesses;

(4) Are for commissary or exchange resale; or

(5) Are for long distance telecommunications services.

[FR Doc. 95–20741 Filed 8–21–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 081595A]

Pacific Halibut Fisheries; Area 2A Non-Treaty Commercial Fishery Reopening

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes inseason actions pursuant to IPHC regulations approved by the U.S. Government to

govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock.

EFFECTIVE DATE: 8:00 a.m. through 6:00 p.m., local time, August 15, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1995 Halibut Landing Report Number 12

Area 2A Non-Treaty Commercial Fishery to Reopen

The August 1 fishing period in Area 2A resulted in a catch of 8,000 lb (3.62 metric tons (mt)). The revised total commercial catch from Area 2A to date is 48,000 lb (21.77 mt), leaving approximately 57,000 lb (25.85 mt) to be taken.

Area 2A will reopen on August 15 for 10 hours from 8:00 a.m. to 6:00 p.m. local time. The fishery is restricted to waters that are south of Point Chelhalis, WA (46°53′18″ N. lat.) under regulations promulgated by NMFS. Fishing period limits as indicated in the following table will be in effect for this opening.

Vessel class		Fishing period limit (lb)	
Length	Letter	Dressed, head-on	Dressed, head-off*
0–25	A	380	335
26–30	B	475	420
31–35	C	760	670
36–40	D	2,100	1,850
41–45	E	2,260	1,990
46–50	F	2,710	1,190
51–55	G	3,020	2,660
56+	H	4,545	4,000

*Weights are after 2 percent has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length class and letter is printed on each halibut license.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight, although fishermen are reminded that regulations require that all halibut from Area 2A be landed with the head on.

The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

Dated: August 16, 1995.

Richard W. Surdi,

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

[FR Doc. 95–20708 Filed 8–21–95; 8:45 am]

BILLING CODE 3510–22–W

50 CFR Part 661

[Docket No. 950426116–5116–01; I.D. 080995C]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Closure from the U.S.-Canadian border to Cape Alava, WA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the recreational salmon fishery in the area from the U.S.-Canadian border to Cape Alava, WA, was closed at midnight, August 4, 1995. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational quota of 7,100 coho salmon for the area has been reached. This action is necessary to conform to the preseason announcement of the 1995 management measures and is intended to ensure conservation of coho salmon.

DATES: Effective at 2400 hours local time, August 4, 1995 through September 28, 1995. Comments will be accepted through September 5, 1995.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, NMFS will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In the annual management measures for ocean salmon fisheries (60 FR 21746, May 3, 1995), NMFS announced that the 1995 recreational fishery in the area between the U.S.-Canadian border and Cape Alava, WA, would open on August 1 and continue through September 28 or attainment of the 5,850 coho salmon quota, whichever occured first. An inseason adjustment was made to increase the coho salmon quota in this area to 7,100 fish (60 FR 40302, August 8, 1995).

The best available information on August 2 indicated that recreational catches in the area totaled over 1,500 coho salmon on August 1, the first day of the fishery. Based on that catch level, recreational fishing could continue for 4 days without exceeding the quota. A fifth day of fishing would greatly exceed the quota. Therefore, NMFS determined to close the fishery at midnight, August 4.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Washington Department of Fish and Wildlife regarding this closure. The State of Washington will manage the recreational fishery in State waters adjacent to this area of the Exclusive Economic Zone in accordance with this Federal action. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 2400 hours local time, August 4, 1995, by telephone hotline number (206) 526–6667 and (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. Because of the need for immediate action to conserve coho salmon, NMFS has determined that

good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 16, 1995.

Richard W. Surdi,

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

[FR Doc. 95–20768 Filed 8–21–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 162
Tuesday, August 22, 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 AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Foreign Agricultural Service (FAS) proposes to amend the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480). The proposed amendments would delete one document from the list of those documents currently required to be submitted by the commodity supplier to the banking institution to support a request for payment; and would delete the contracting and documentary requirements for commodities which have not been shipped under the program for a number of years.

The purpose of these changes is to reduce the paperwork burden on commodity suppliers and to simplify and shorten the regulations.

DATES: Written comments should be submitted on or before September 21, 1995.

ADDRESSES: Comments should be sent to Mary T. Chambliss, Deputy Administrator, Foreign Agricultural Service, U.S. Department of Agriculture, room 4077 South Building, 14th and Independence SW., Washington, DC 20250–1031.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, P.L. 480 Operations Division, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4549 South Building, 14th and Independence, SW., Washington, DC 20250–1033. Telephone: (202) 720–3664.

SUPPLEMENTARY INFORMATION: The proposed rule is issued in conformance with Executive Order 12866. It has been determined to be significant for the purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act. The General Sales Manager has certified that this rule will not have a significant economic impact on a substantial number of small entities because it simply removes from the regulations information regarding a number of inactive commodities and eliminates one document currently required to be submitted by commodity suppliers seeking payment. There will be no significant economic impact from this proposal on small or large entities. A copy of this proposed rule has been submitted to the General Counsel, Small Business Administration.

Executive Order 12372

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

Executive Order 12778

The proposed rule has been reviewed under the Executive Order 12778, Civil Justice Reform. The proposed rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The proposed rule would not have retroactive effect. The rule does not require that administrative remedies be exhausted before suit may be filed.

Background

Under title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480), the Commodity Credit Corporation (CCC) is authorized to finance the sale and exportation of agricultural commodities purchased by foreign countries. The Pub. L. 480, title I Financing Regulations (''the regulations'') specify the documents which the commodity supplier must present to support a request for payment.

Appendix A (''Contracting Requirements'') and Appendix B (''Documentary Requirements'') of the regulations specify the basic contracting and documentary requirements for a number of commodities which have been shipped under the program since its inception. Many of these commodities have not been programmed for a number of years, and the contracting and documentary requirements are out-of-date.

Form CCC–106–1 and 106–3 (Commodity Supplier)

CCC issues Form CC–106, ''Advice of Vessel Approval,'' to provide written approval for each commodity shipment. The form includes the name of the vessel and its flag; the ocean freight rate; and the amount of the ocean transportation which will be financed by CCC. Suppliers of commodities must submit a completed Form CCC–106 to support all claims for payment while suppliers of ocean transportation must do so only when CCC finances any part of the ocean transportation and when shipments are contracted basis delivery f.a.s. (''fee alongise'') or f.o.b. (''free on board'') vessel. CCC uses the form to insure compliance with the requirements of the Cargo Preference Act regarding the tonnage to be shipped on U.S.-flag vessels and to specify the amount of the ocean transportation which CCC will finance.

FAS proposes to remove the requirement that Form CCC–106 be submitted as a payment document by the commodity supplier for sales made on an f.a.s. or f.o.b. basis. Under these contract terms, commodity and freight contracts are separate, and the commodity supplier has no control over the vessel to be used.

If commodity sales are made on a ''cost and freight'' (c. & f.) or ''cost, insurance and freight'' (c.i.f.) basis, however, the commodity supplier would still be required to submit a completed Form CCC–106 since the commodity supplier would also control the ocean freight.

The proposed amendments also delete references to the colors of the various forms because the forms are now computer-generated and colored carbon-set forms are no longer used.

Appendices A and B

A number of the commodities referred to in these appendices have not been used in the program for more than five years, and some for more than 20 years. To simplify and shorten the regulations and reduce printing and distribution costs, FAS proposes to delete the sections of these appendices for the following commodities: Corn meal; cracked corn; unmanufactured tobacco and tobacco products; dry edible beans; dry edible peas; lard; poultry; canned milk; nonfat dry milk, dry whole milk; butter, anhydrous milk fat, anhydrous butter fat and butteroil; cheese; ghee; and stabilized dried whole eggs.

Removing these sections from the regulations does not affect the potential for future programming of these commodities under the title I program. If any of the commodities removed from the appendices were to be programmed under title I in the future, the relevant purchase authorization would contain the updated contracting and documentary requirements.

Paperwork Reduction Act

The reporting and recordkeeping requirements contained in this proposed rule have been assigned OMB control number 0551–0005. This proposed rule does not impose a public reporting burden. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for further reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AGBOX 7630, Washington, DC 20250–7630; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (OMB #0551–0005), Washington, DC 20503.

List of Subjects in 7 CFR Part 17

Agricultural commodities; exports; finance; maritime carriers.

Accordingly, 7 CFR part 17, subpart A, is amended as follows:

1. The authority citation for part 17 continues to read as follows:

Authority: 7 U.S.C. 1701–1705, 1736a, 1736c, 5676; E.O. 12220, 45 FR 44245.

§ 17.2 [Amended]

2. In § 17.2(b), the definition of ''Form CCC–106'' is amended by removing the last sentence.

3. In § 17.14, the word ''(white)'' is removed from the first sentence of paragraph (d)(1); the last sentence of paragraph (d)(1) and all of paragraph (d)(2)(i) are revised to read as follows; and the work ''(yellow)'' is removed from paragraph (d)(2)(ii), as follows:

§ 17.14 Ocean transportation.

* * * * *

(d) *Advice of vessel approval.* * * *

(1) *For cotton.* * * * If CCC finances any part of the ocean freight when cotton is shipped on an f.a.s. basis, a signed original copy of this form will be issued to the ocean carrier.

(2) *For commodities other than cotton.* * * *

(i) For shipments to be made on an f.o.b. or f.a.s. basis, when CCC finances any part of the cost of ocean freight, the original of Form CCC–106–2 will be issued to the ocean carrier.

* * * * *

§ 17.18 [Amended]

4. In § 17.18, the phrase ''for c. & f. or c.i.f. sales'' is added at the end of paragraph (c)(8)(ii).

Appendices A and B [Amended]

5. In Appendix A and Appendix B, existing sections (D), (E), (G), (I), (J), (L), (M), (N), (O), (P), (Q), (R), (S), (T), and (U) are removed; existing section (K) is redesignated as (G); existing section (V) is redesignated as (D); and existing section (W) is redesignated as (E).

6. In Appendix B, ''Documentary Requirements,'' the phrase ''for c. & f. or c.i.f. sales'' is added at the end of the following paragraphs: (A) (1)(d) and (2)(d); (B)(4); (C) (1)(d) and (2)(d); newly redesignated (D)(4) and (E)(4); (F) (1)(d) and (2)(d); newly redesignated (G) (1)(d) and (2)(d); and (H) (1)(d) and (2)(d).

Signed at Washington, D.C. on June 12, 1995.

Christopher E. Goldthwait,

General Sales Manager, Foreign Agricultural Service; and Vice President, Commodity Credit Corporation.

[FR Doc. 95–20780 Filed 8–21–95; 8:45 am]

BILLING CODE 3410–10–M

Animal and Plant Health Inspection Service

7 CFR Part 340

[Docket No. 95–040–1]

RIN 0579–AA73

Genetically Engineered Organisms and Products; Simplification of Requirements and Procedures for Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations pertaining to genetically engineered plants introduced under notification and to the petition process for the determination of nonregulated status. The proposed notification amendments would allow most genetically engineered plants that are considered regulated articles to be introduced under the notification procedure, provided that the introduction meets certain eligibility criteria and performance standards. We are also proposing to reduce the field test reporting requirements for trials conducted under notification for which no unexpected or adverse effects are observed. The proposed petition amendments would enable APHIS to extend an existing determination of nonregulated status to certain additional regulated articles that are closely related to an organism for which a determination of nonregulated status has already been made. APHIS also announces its intention to use guidelines when appropriate to provide additional information to developers of regulated articles and other interested persons regarding procedures, methods, scientific principles, and other factors that could be considered in support of actions under the regulations pertaining to genetically engineered plants introduced under notification.

The effect of the proposed amendments would be to simplify procedures for the introduction of certain genetically engineered organisms, requirements for certain determinations of nonregulated status, and procedures for the reporting of field tests conducted under notification.

DATES: Consideration will be given only to comments received on or before October 23, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–040–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–040–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Schechtman, Domestic Programs Leader, Biotechnology Coordination and Technical Assistance, BBEP, APHIS, 4700 River Road Unit 146, Riverdale, MD 20737–1237, (301) 734–7601.

SUPPLEMENTARY INFORMATION:

Background

I. Introduction

The regulations in 7 CFR part 340, referred to below as the regulations, pertain to the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are derived from known plant pests (regulated articles). Before introducing a regulated article, a person is required under § 340.0 of the regulations to either (1) notify the Animal and Plant Health Inspection Service (APHIS) in accordance with § 340.3 or (2) obtain a permit in accordance with § 340.4. Introductions under notification must meet specified eligibility criteria and performance standards. Under § 340.4, a permit is granted for a field trial when APHIS has determined that the conduct of the trial, under the conditions specified by the applicant or stipulated by APHIS, does not pose a plant pest risk.

An organism is not subject to the regulations when the organism is demonstrated not to present a plant pest risk. Section 340.6 of the regulations, entitled ''Petition for determination of nonregulated status,'' provides that a person may petition APHIS to evaluate submitted data to determine that a particular regulated article does not present a plant pest risk and should no longer be regulated. If APHIS determines that the regulated article does not present a risk of introduction or dissemination of a plant pest, the petition will be granted, thereby allowing unrestricted introduction of the article. A petition may be granted in whole or in part.

In the preamble to the final regulations published on June 16, 1987 (52 FR 22892–22915, Docket No. 87–021), APHIS stated its intention to modify or amend the regulations to ensure flexibility and to remove restrictions when warranted as experience is gained and knowledge is accrued about safe introductions of particular classes of organisms. APHIS previously demonstrated its commitment to amend the regulations by instituting exemptions for the movement, under specified conditions, of certain microorganisms that contain plant pest sequences (53 FR 12910–12913, Docket No. 88–019, April 20, 1988), and of the plant *Arabidopsis thaliana* (55 FR 53275–53276, Docket No. 90–172, December 28, 1990), and by instituting both a notification procedure for the introduction of certain regulated articles and a petition procedure for the determination of nonregulated status (58 FR 17044–17059, Docket No. 92–156–02, March 31, 1993).

Under the current regulations, plants from six crop species, i.e., corn (*Zea mays* L.), cotton (*Gossypium hirsutum* L.), potato (*Solanum tuberosum* L.), soybean (*Glycine max* (L.) Merr.), tobacco (*Nicotiana tabacum* L.), and tomato (*Lycopersicon esculentum* L.), are eligible for notification, provided that certain eligibility criteria and performance standards are met. The notification procedure also allows for additional plant species that Biotechnology, Biologics, and Environmental Protection (BBEP) determines may be safely introduced in accordance with the eligibility criteria.

II. Proposed Expansion of Notification

APHIS is proposing to allow the use of the notification procedure for the introduction of most genetically engineered plants that are considered regulated articles, provided that the introduction is conducted in accordance with all other eligibility requirements and performance standards. APHIS believes that an expansion of the notification system to new plant species would simplify oversight procedures for new agricultural biotechnology products, while continuing to ensure their safe development.

Currently, the regulations require that introductions of most plant species be done under permit from APHIS. The applications for permits are evaluated on a case-by-case basis. Since the APHIS permitting process for regulated articles was established in 1987, we have gained considerable experience. We have issued over 560 permits for release into the environment and over 1280 permits for movement. Most of the regulated articles field tested under permit have been plants. Through December 31, 1994, permits have been issued for a wide variety of plants. Thirty-nine different plant species have been field tested under permit, and 67 species have been moved under permit. The list of species includes a wide range of transgenic plants from 22 plant families, including flowering plants, monocots, dicots, gymnosperms, herbs, shrubs, and trees. These species exhibit a wide variety of breeding systems, including entomophily, anemophily, cleistogamy, and sexual and asexual reproduction, and exhibit seed dissemination of many different kinds. The plants have been grown in virtually all 50 States and have been moved to facilities with different laboratories, growth chambers, and greenhouses. One result of our experience with permitting has been the finding that introductions of many different regulated articles can be conducted with little or no plant pest or environmental risk, provided that certain criteria and performance standards are met. APHIS notes in addition that even at the time that notification procedures were initially proposed in 1992, several commenters suggested that APHIS should broaden the list of organisms eligible for notification beyond the proposed list of six crops in § 340.3(b)(1)(i). After the notification procedures went into effect, APHIS has received other inquiries about adding particular additional crops to the list.

Since the APHIS notification procedure was established in 1993, we have reviewed and acknowledged over 900 notifications for field tests involving corn, cotton, potato, soybean, tobacco, and tomato. The current notification procedure involves a review of the application by APHIS to confirm that the application falls under notification, i.e., that it meets the criteria in § 340.3(b)(2) through § 340.3(b)(6). Appropriate State regulatory officials are notified. After acknowledgement of the notification by APHIS, the regulated article and site(s) of introduction are subject to inspection by APHIS and State regulatory officials. After field testing, the submission of a field test report by the applicant to APHIS is required.

One result of our experience with notification has been that such a notification procedure results in little or no plant pest or environmental risk, provided that the criteria and performance standards specified in § 340.3(b)(2) through § 340.3(b)(6) and § 340.3(c) are met. These criteria and performance standards would be retained in the proposed amendment, except that eligibility criterion in § 340.3(b)(5) would be expanded to allow the inclusion of certain additional plant virus sequences in the regulated article, as described later in this portion of the preamble.

To establish the notification procedure for additional plant species, we would revise § 340.3(b)(1), which currently lists specific crop species eligible for notification. Proposed § 340.3(b)(1) would allow the introduction under notification procedures of any plant species that is not listed as a noxious weed under regulations in 7 CFR part 360, and, for releases in the environment, is not considered a weed in the area of the proposed release into the environment.

The Agency's experience with interstate movement, importation, and release permits indicates that crop plants can be released into the

environment under notification procedures with little or no plant pest risk or potential for significant impact on the environment, if the applicant meets the performance standards given in the regulations. APHIS intends to continue its practice of consulting with appropriate State officials or other experts whenever there are questions regarding impacts on weedy populations of the plant species in question in the test area. APHIS also notes that the movement and introduction of any plant species considered a parasitic plant is subject to additional restrictions under regulations in 7 CFR parts 330 and 360 under the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) and the Federal Noxious Weed Act (7 U.S.C. 2809), respectively.

The performance standards in § 340.3(c) of the regulations provide a description of what APHIS considers effective containment standards, typically applied on a case-by-case basis in APHIS's reviews of field trials for organisms under permit. The performance standards have, APHIS believes, effectively addressed all potential concerns with respect to nontarget effects, persistence of the regulated article in the environment, and volunteer plants. The standards also represent an enumeration of standard good agricultural practice as might be implemented by researchers and plant breeders in field trials involving the introduction of new plant material. APHIS believes that the standards apply equally well when implemented as part of a notification procedure as when implemented under a permit procedure.

The requirement that plants released into the environment are not considered weeds in the area of the field trial is not meant to supersede any State or Federal laws or regulations regarding weeds, such as the Federal Noxious Weed Act or the various laws of the States. The requirements of all such laws, acts, and regulations would be followed as part of APHIS' determination of eligibility under notification.

APHIS is also proposing to increase the range of virus resistance modifications that are included under § 340.3(b)(5), which states:

(5) To ensure the introduced genetic sequences do not pose a significant risk of the creation of any new plant virus, they must be:

(i) Noncoding regulatory sequences of known function, or

(ii) Sense or antisense genetic constructs derived from viral coat protein genes from plant viruses that are prevalent and endemic in the area where the introduction will occur and that infect plants of the same host species, or

(iii) Antisense genetic constructs derived from noncapsid viral genes from plant viruses that are prevalent and endemic in the area where the introduction will occur and that infect plants of the same host species.

This provision does not allow plants expressing sense constructs of noncapsid viral genes to qualify for introduction under notification. In its response to comments on notification in the 1993 final rule that established notification procedures, APHIS stated its commitment to ''seek input from the public on the inclusion under notification of plants expressing sense constructs from all other noncapsid viral genes.'' On April 21–22, 1995, APHIS convened a meeting entitled ''Transgenic Virus-resistant Plants and New Plant Viruses,'' which brought together over 50 plant virologists to elicit information regarding the safety of virus-resistant plants. The data gathered at the workshop identified no potential increased risks associated with the field testing of transgenic plants carrying specific plant virus genes other than coat protein genes, with the sole exception of genes encoding functional viral movement proteins. This information, which will be contained within proceedings to be published later this year, supports APHIS' position to expand the virus gene eligibility criterion to include all genes encoding noncapsid viral proteins except for movement proteins. Movement proteins are virus-encoded proteins that mediate cell-to-cell spread of virus. After a virus infects and multiplies in a single plant cell, it must move to adjacent cells and eventually throughout the plant in order to be a successful pathogen. Examples of known movement proteins are the 30K protein of tobamoviruses and the 24K protein of potexviruses.

Information presented at the meeting indicates that there may be some uncertainty about the effects of an introduced gene encoding a functional movement protein on viral infections of the plant. However, genes encoding movement proteins that have been modified so they no longer produce a functional product should not pose additional potential unknown risks. APHIS wishes to clarify, however, that the definition of movement protein is not intended to include the products of coat (capsid) protein genes, even though coat proteins have some involvement in long distance movement of virus in a plant in some instances. These proteins do not have a primary role in cell-to-cell virus movement.

In accordance with this information, APHIS is proposing to revise § 340.3(b)(5). Under proposed § 340.3(b)(5), to ensure that the introduced genetic sequences do not pose a significant risk of the creation of any new plant virus, plant virus-derived sequences must be noncoding regulatory sequences of known function; or sense or antisense genetic constructs derived from viral genes from plant viruses that are prevalent and endemic in the area where the introduction will occur and that infect plants of the same host species, and that do not encode any functional noncapsid gene product responsible for cell-to-cell movement of the virus.

APHIS is also proposing to amend its administrative procedures in response to notifications for interstate movement. When a regulated article is to be moved from another State under notification procedures, APHIS has requested concurrence from the receiving State prior to APHIS' acknowledgment of the notification. APHIS would continue to notify appropriate State regulatory officials of all interstate movements of regulated articles and provide the States the opportunity to provide comments or raise concerns if they so wish. APHIS would continue to ensure that any concerns raised by a State would be addressed prior to APHIS acknowledgment. Based on the history of safe interstate movement of regulated articles under notification and on a desire to lessen administrative burdens imposed on State cooperators while meeting their information requirements, however, APHIS proposes to discontinue the requirement that States in every case provide concurrences for notifications for interstate movement prior to APHIS acknowledgment. This change would be accomplished by amending § 340.3(e)(1) to indicate that the Director, BBEP, will notify the appropriate State regulatory official(s) within 5 business days of receipt for all notifications. Any additional administrative changes would only be made in full consultation with State regulatory officials. Information regarding all notifications will continue to be available on the APHIS database on the Internet. APHIS invites comment on whether this proposed change will meet the administrative needs of its State cooperators.

III. Proposed Changes to Regulations for Petitions for Determination of Nonregulated Status

APHIS is proposing to amend its regulations in § 340.6 to allow the extension of a previously issued determination of nonregulated status to

certain additional regulated articles that are closely related to an organism that was determined not to be a regulated article in the initial determination. The text of the new regulations will be placed at § 340.6(e), and entitled, ''Extensions of determinations of nonregulated status.''

To date, APHIS has approved, in whole or in part, eight petitions for a determination of nonregulated status under its regulations at § 340.6. Each of those determinations applied only to a specific set of plant transformation events and all progeny derived from them. In addition, with regard to one determination, we subsequently extended nonregulated status to additional transformed lines originally contained within the initial petition request, following the receipt of supplementary data (59 FR 50220, Docket No. 94–096–1, October 3, 1994; 59 FR 59746, Docket No. 94–125–1, November 19, 1994; 60 FR 15284, Docket No. 95–015–1, March 23, 1995). Several other petitions, either currently under review or being discussed as drafts with potential applicants, relate to regulated articles that are closely related to organisms that have already been granted nonregulated status.

Our expectation is that many additional petitions will be received concerning regulated articles that differ negligibly, from a safety standpoint, from others that have already been reviewed. APHIS believes that these petitions can and should be reviewed in a more streamlined manner than petitions concerning organisms that present potential plant pest risk issues that have not yet been specifically addressed.

In order to establish the framework under which extensions of existing determinations to certain additional regulated articles would be considered, a new term, ''antecedent organism,'' would be added to part § 340.1, and would be defined as an organism that has already been the subject of a determination of non-regulated status by APHIS under § 340.6, and that is used as a reference for comparison to the regulated article under consideration. This term expresses the agency's intent to consider the degree of APHIS' familiarity with the types of modifications in the regulated article and with the behavior in the environment of organisms similar to the one under consideration. The antecedent organism would be used as the reference for comparison with the regulated article. The aim of making such a comparison would be to ensure that the regulated article in question raises no serious new issues meriting a separate review under the petition process.

Under this section, requests might be made, for example, that a determination of nonregulated status be extended to new transformant lines derived by transformation of a new cultivar of the same crop species with the plasmid used in constructing the antecedent organism, or to other lines produced using a related plasmid encoding a protein of identical amino acid sequence, but in which codon usage has been modified to improve gene expression. A submitter should provide to APHIS information that describes the characteristics and identity of the regulated articles that are the subject of the request, and that describes the relatedness between the regulated article and its antecedent organism.

APHIS would publish all extensions of existing determinations of nonregulated status in the **Federal Register**. This decision will become final 30 days after publication unless the agency receives any significant comments which the agency believes warrants further consideration. This will allow time for the public to become aware of our decision and to bring to the agency's attention any additional information that might be relevant to that decision.

The proposed new provisions also provide that APHIS would inform any person, whose request for extension of an existing determination was denied, of the reasons for that denial. Such a person would be allowed to resubmit without prejudice a modified request or a separate petition for determination of nonregulated status.

APHIS believes that this approach will streamline regulatory requirements for organisms that can be straightforwardly demonstrated not to pose a potential for plant pest risk, while continuing to provide adequate oversight to assure their safe development.

IV. Guidelines

APHIS is committed to regulations that are adjusted as information and experience are gained. As indicated earlier, APHIS has amended its regulations several times to reflect the increasing knowledge with respect to new products of agricultural biotechnology. APHIS wishes to continue to provide additional information to developers of regulated articles and other interested persons regarding procedures, practices, and protocols that could be considered by the agency in support of actions under the regulations. A footnote has been added in §§ 340.3, 340.4, 340.5, and 340.6 to indicate that APHIS intends to prepare guidelines detailing procedures, practices, or protocols related to scientific evaluations, product identity standards, and other technical or policy considerations. Guidelines will state procedures, practices, or protocols relevant to matters under this part that fall under the Federal Plant Pest Act and the Plant Quarantine Act. A person may follow an APHIS guideline or may follow different procedures, practices, or protocols. When different procedures practices, or protocols are followed, a person may, but is not required to, discuss the matter in advance with APHIS to help ensure that the procedures, practices, or protocols to be followed will be acceptable to APHIS.

The first guidelines that will be prepared are intended to help submitters establish the level of similarity or relatedness between a regulated article and its antecedent organism, by illustrating procedures and methods that would be acceptable to the agency to establish such similarity or relatedness, and principles or issues of potential concern that might be considered by the agency. APHIS does not believe it is appropriate to establish rigid rules for determining similarity or relatedness, in view of the rapid pace of technological change that is expanding the potential for developing plants with new types of desirable modifications. However, the agency believes that it can provide guidance on the types of factors that should be relevant for a submitter to consider.

V. Simplifications to Reporting Requirements Under Permit or Notification

APHIS is proposing to simplify the reporting requirements on the performance characteristics of regulated articles in field trials that have been conducted under permit or notification, while leaving unchanged recordkeeping requirements for those trials. The regulations at § 340.4(f)(9) require that permit holders submit to BBEP monitoring reports on the performance characteristics of the regulated article, in accordance with any monitoring reporting requirements that may be specified in a permit. Starting with field trials in the 1988 growing season, APHIS incorporated into its Supplemental Permit Conditions for all field trials conducted under permit, a reporting requirement for data on the fate of the genetically engineered organisms in the environment. In addition, § 340.4(f)(10) specifies the time and manner for rapid notification of BBEP in the event of accidental or unauthorized release of the regulated

article, or upon finding that the regulated article or associated host has characteristics substantially different from those listed in the application, or suffers any unusual occurrence (excessive mortality or morbidity, or unanticipated effect on non-target organisms).

For field trials conducted under notification procedures, § 340.3(d)(4) requires that field test reports be submitted to the Director, BBEP, within 12 months after the start of the field test and every 12 months through the duration of the field test. It also requires that final reports for those field tests lasting more than 12 months are due 6 months after the termination of the test. Field test reports shall include the APHIS reference number and methods of observation, resulting data, and analysis regarding all deleterious effects on plants, nontarget organisms, or the environment. In addition, § 340.3(d)(5) stipulates that the requirements in § 340.4(f)(10), for reporting of unusual occurrences in field trials conducted under permit, also apply to field trials conducted under notification.

The vast majority of data reports received by APHIS for field trials under either permit or notification have identified no deleterious effects of the regulated article on plants, nontarget organisms, or the environment. Less than one percent of all field trial reports have noted any unusual occurrences of the types indicated in § 340.3(d)(5). Occasional crop lines have exhibited substandard agronomic performance, i.e., they were wilted, or were smaller or less sturdy than controls. No event in any field trial has resulted in any known unmanaged dissemination of a regulated article.

APHIS proposes to amend the requirements for submission of field data reports for field trials under notification procedures so that only reports documenting unusual occurrences would need to be submitted within the intervals previously specified. Persons submitting petitions for determination of nonregulated status would, however, be required to submit all data reports for field trials completed prior to petition submission and submit appropriate data reports for ongoing field trials lasting more than one year. This would effect a change in reporting requirements but not recordkeeping requirements. All records documenting the safety of field trials would need to be maintained by persons responsible for the conduct of those trials, but, apart from instances in which deleterious effects on plants, nontarget organisms, or the environment are observed, those data would only be needed to be considered by APHIS at the time of petition. Submission of field trial reports documenting the absence of deleterious effects on plants, nontarget organisms, or the environment in completed field trials under notification procedures would no longer be required prior to submission of subsequent notifications for the same regulated article(s). The existing provisions in § 340.4(f)(10) for rapid communication with BBEP in the event of certain unusual circumstances would remain unchanged, and the proposed regulation continues to require routine reporting of other deleterious effects that might be observed.

To implement these changes, § 340.3(d)(4) would be amended. It would require that responsible persons maintain records of the conduct and status of all field trials under notification procedures, that field test records include the APHIS reference number, and methods of observation, resulting data, and analysis regarding all deleterious effects on plants, nontarget organisms, or the environment. For field tests in which deleterious effects on plants, nontarget organisms, or the environment are observed, proposed § 340.3(d)(4) would also require that field test reports be submitted to the Director, BBEP, within 12 months after the start of the field test, and every 12 months through the duration of the field test. For field tests lasting more than 12 months, final reports would be due 6 months after the termination of the field test. Field test reports would have to include all data required in field test records for the trial.

A new § 340.6(c)(5) would also be added, amending the list of required data and information in a petition to indicate the requirement to submit all field test reports at the time of petition submission. We would require the submission of field test reports for all trials conducted under permit or notification procedures, involving the regulated article, that were completed prior to petition submission. For ongoing trials longer than 12 months in duration, interim field test reports are required for each year. Field test reports would have to include the APHIS reference number, and methods of observation, resulting data, and analysis regarding all deleterious effects on plants, nontarget organisms, or the environment.

APHIS is also proposing to clarify the requirements for data reporting for those field trials that remain under permit. These field trials involve traits that do not meet the eligibility criteria set forth in § 340.3(b)(2) through § 340.3(b)(6) or field testing protocols that deviate from the requirements of the performance standards set forth in § 340.3(c). Submission of data reports for field trials under permit, which has to date been required via Supplemental Permit Conditions attached to the APHIS permits for conduct of the trials, would now be explicitly required in the regulation. This proposed rule change should not alter the content of field test reports that are being submitted by permit recipients under the current regulations. APHIS, however, believes that the formal requirement for submission of field data reports should be included within the permit regulations in current § 340.4 to emphasize the importance of these reports in establishing the safety of field tests using particular classes of organisms. Under the proposed changes to our notification procedure, such safety information would be used to establish that new crop species can be safely field tested under notification, and could also help establish that crop plants having other types of modifications can be safely field tested under notification.

Accordingly, § 340.4(f)(9) would be amended to require that a person who has been issued a permit submit to the Director, BBEP, field test reports within 12 months after the start of the field test, and every 12 months through the duration of the field test. For field tests lasting more than 12 months, proposed § 340.4(f)(9) would require final reports 6 months after the termination of the field test. The field test reports would have to include the APHIS reference number, and methods of observation, resulting data, and analysis regarding all deleterious effects on plants, nontarget organisms, or the environment.

VI. Rulemaking Analyses

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.[1]

[1] The agricultural biotechnology industry is still in a relatively early stage of development. Each year, as the industry continues to grow, it is anticipated there will be growth in experimentation, ultimately resulting in an increase in agricultural production and a broadening of international trade. The potential benefits could be significant, but are speculative at this time. APHIS anticipates that this Proposed Rule will be generally welcomed by public and private researchers, because it is estimated that it could save the industry as a whole perhaps $50,000 in costs associated with preparing submissions to APHIS.

Continued

The effect of the proposed amendments would be to simplify procedures: (1) for the introduction of certain genetically engineered organisms by expanding the scope of organisms that would be included under notification procedures and lessening certain administrative requirements for State concurrence on interstate movements under notification procedures; (2) for determination of nonregulated status for certain organisms by allowing for extension of determinations of nonregulated status to other regulated articles closely related to those for which the initial determination was made; and (3) for reporting requirements by focusing on reporting only of unusual events for field tests conducted under notification, while maintaining recordkeeping requirements.

The expansion of the scope of organisms included under notification procedures would eliminate the need for a permit to conduct field tests for many crops that currently fall under the permitting regulations. This would allow researchers to conduct field tests for most crops with greatly simplified regulatory requirements. At present, approximately 87 percent of all field trials are conducted under notification procedures. Based on trials to date, APHIS estimates that less than 0.5 percent of the transgenic plants field tested would not qualify for notification procedures based on the local weed status of the crop species. In addition, nearly 99 percent of all introduced genes in plants field tested to date have qualified under notification procedures. Most of the donor genes that have not met the eligibility criteria have been virus-derived genes that could potentially also qualify for notification under the proposed § 340.3(b)(5). APHIS therefore estimates that about 99 percent of all field trials would be conducted under notification procedures under these proposed modifications. APHIS estimates that the cost savings for preparation of notification over preparation of a permit application is approximately 95 percent.

APHIS also estimates that extension of existing determinations would potentially be applicable to perhaps half of all regulated articles for which a determination of nonregulated status might be sought. The amount of time required to establish similarity with an antecedent organism, APHIS estimates, might be about one-fourth of that required for preparation of a petition for determination of nonregulated status. In addition, there would be time savings for applicants for field tests under notification, who would not be required to submit field data reports on other than adverse events until the time of petition for determination of nonregulated status. Much of this data is data that the researcher should already have acquired while conducting field tests of genetically engineered crops.

This proposed rule is consistent with the risk- and product-based philosophy underlying the Federal policy for the regulation of the products of biotechnology, as announced by the Office of Science and Technology Policy in the Coordinated Framework for the Regulation of the Products of Biotechnology (51 FR 23303–23350, June 26, 1986). It is also consistent with the principles of regulation expressed in Executive Order 12866, specifically that the agency consider the degree and nature of risks posed by the activities under its jurisdiction, and tailor its regulations to achieve the least burden on society consistent with obtaining its regulatory objectives. The proposed option of allowing applicants to submit protocols for product identity standards is also consistent with the Presidential Memorandum to heads of Departments and Agencies of March 4, 1995, on the Regulatory Reform Initiative which, among other things, directs agencies to consider the question, ''Could private business, setting its own standards and being subject to public accountability, do the job as well?''

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

Executive Order 12372

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Docket No. 95–040–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 7 CFR Part 340

Administrative practice and procedure, Biotechnology, Genetic engineering, Imports, Packaging and containers, Plant diseases and pests, Transportation.

Accordingly, we are proposing to amend 7 CFR part 340 as follows:

PART 340—INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING WHICH ARE PLANT PESTS OR WHICH THERE IS REASON TO BELIEVE ARE PLANT PESTS

1. The authority citation for part 340 would continue to read as follows:

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 340.1, the following definition would be added in alphabetical order to read as follows:

§ 340.1 Definitions.

* * * * *

Antecedent organism. An organism that has already been the subject of a determination of nonregulated status by APHIS under § 340.6, and that is used as a reference for comparison to the regulated article under consideration under this part.

* * * * *

Footnotes 5 through 7, 8 and 9 [Redesignated as Footnotes 7 through 9, 12 and 13]

3. In part 340, footnotes 5 through 7 and 8 and 9 would be redesignated as footnotes 7 through 9 and 12 and 13, respectively.

4. In § 340.3, a new footnote 5 would be added at the end of the section heading and paragraphs (b)(1), (b)(5),

These savings are expected to increase as the number of submissions to APHIS continues to grow.

(d)(4), and (e)(1) would be revised to read as follows:

§ 340.3 Notification for the introduction of certain regulated articles.[5]

* * * * *

(b) * * *

(1) The regulated article is any plant species that is not listed as a noxious weed in regulations at 7 CFR part 360 under the Federal Noxious Weed Act (7 U.S.C. 2809), and, when being considered for releases into the environment, the regulated article is not considered by the Administrator to be a weed in the area of release into the environment.

* * * * *

(5) To ensure that the introduced genetic sequences do not pose a significant risk of the creation of any new plant virus, plant virus-derived sequences must be:

(i) Noncoding regulatory sequences of known function; or

(ii) Sense or antisense genetic constructs derived from viral genes from plant viruses that are prevalent and endemic in the area where the introduction will occur and that infect plants of the same host species, and that do not encode a functional noncapsid gene product responsible for cell-to-cell movement of the virus.

* * * * *

(d) * * *

(4) Responsible persons shall maintain records of the conduct and status of all field trials under notification procedures. Field test records shall include the APHIS reference number. Field test records shall also include methods of observation, resulting data, and analysis regarding all deleterious effects on plants, nontarget organisms, or the environment.

(i) For field tests in which deleterious effects on plants, nontarget organisms, or the environment are observed, field test reports must be submitted to the Director, BBEP, within 12 months after the start of the field test, and every 12 months thereafter throughout the duration of the field test. For field tests lasting more than 12 months, final reports are due 6 months after the termination of the field test.

(ii) Field test reports shall include all data required in field test records for the trial.

* * * * *

(e) * * *

(1) The Director, BBEP, will notify the appropriate State regulatory official(s) within 5 business days of receipt for all notifications.

* * * * *

5. In § 340.4, a new footnote 6 would be added at the end of the section heading and paragraph (f)(9) would be revised to read as follows:

§ 340.4 Permits for the introduction of a regulated article.[6]

* * * * *

(f) * * *

(9) A person who has been issued a permit shall submit to the Director, BBEP, field test reports within 12 months after the start of the field test, and every 12 months thereafter throughout the duration of the field test. For field tests lasting more than 12 months, final reports are due 6 months after the termination of the field test. Field test reports shall include the APHIS reference number. Field test reports shall also include methods of observation, resulting data, and analysis regarding all deleterious effects on plants, nontarget organisms, or the environment;

* * * * *

6. In § 340.5, a new footnote 10 would be added at the end of the section heading to read as follows:

§ 340.5 Petition to amend the list of organisms.[10]

* * * * *

7. In § 340.6, a new footnote 11 would be added at the end of the section heading, a new paragraph (c)(5) would be added, paragraph (e) would be redesignated as paragraph (f), and a new paragraph (e) would be added to read as follows:

§ 340.6 Petition for determination of nonregulated status.[11]

* * * * *

(c) * * *

(5) Field test reports for all trials conducted under permit or notification procedures, involving the regulated article, that were completed prior to petition submission. For ongoing trials longer than 12 months in duration, interim field test reports for each year. Field test reports shall include the APHIS reference number. Field test reports shall also include methods of observation, resulting data, and analysis regarding all deleterious effects on plants, nontarget organisms, or the environment.

* * * * *

(e) *Extensions to determinations of nonregulated status.* (1) The Director, BBEP, may determine that a regulated article does not pose a potential for plant pest risk, and should therefore not be regulated under this part, based on the similarity of that organism to an antecedent organism.

(2) A person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request shall include information to establish the similarity of the antecedent organism and the regulated articles in question.

(3) APHIS will announce in the **Federal Register** all extensions of determinations of nonregulated status 30 days before their effective date.

(4) If a request to APHIS to extend a determination of nonregulated status under this part is denied, APHIS will inform the submitter of that request of the reasons for denial. The submitter may submit a modified request or a separate petition for determination of nonregulated status without prejudice.

* * * * *

Done in Washington, DC, this 15th day of August 1995.

Terry Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–20547 Filed 8–21–95; 8:45 am]

BILLING CODE 3410–34–P

[5] APHIS may issue guidelines regarding scientific procedures, practices, or protocols which it has found acceptable in making various determinations under the regulations. A person may follow an APHIS guideline or follow different procedures, practices, or protocols. When different procedures, practices, or protocols are followed, a person may, but is not required to, discuss the matter in advance with APHIS to help ensure that the procedures, practices, or protocols to be followed will be acceptable to APHIS.

[6] See footnote 5 at § 340.3.

[10] See footnote 5 at § 340.3.

[11] See footnote 5 at § 340.3.

9 CFR Part 113

[Docket No. 93–039–3]

Viruses, Serums, Toxins, and Analogous Products; Standard Requirement for Escherichia Coli Bacterins

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for the proposed rule to add a Standard Requirement for *Escherichia coli* bacterins. This extension will provide interested persons with additional time in which to prepare comments on the proposed rule.

DATES: Consideration will be given only to written comments on Docket No. 93–039–1 that are received on or before September 14, 1995.

ADDRESSES: Please send an original and three copies of your comments to

Docket No. 93–039–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 93–039–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION: On October 11, 1994, we published in the **Federal Register** (59 FR 51390–51392, Docket No. 93–039–1) a proposed rule to amend the regulations in 9 CFR part 113 to include a Standard Requirement for *Escherichia coli* bacterins. Comments on the proposed rule were required to be received on or before December 12, 1994.

Based on a request from a national trade association, we published on May 17, 1995, a notice in the **Federal Register** (60 FR 26384, Docket No. 93–039–2) that reopened and extended the comment period until August 15, 1995.

So that we may consider comments submitted after that date, we are reopening and extending the public comment period on Docket No. 93–039–1 an additional 30 days, until September 14, 1995. During this period, interested persons may submit their comments for our consideration.

Authority: 21 U.S.C. 151–159, 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 15th day of August 1995.

Terry Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–20713 Filed 8–21–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 990

Natural Resource Damage Assessments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: Section 1006(e)(1) of the Oil Pollution Act requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, to promulgate regulations for the assessments of natural resources damages resulting from the discharge of oil. The National Oceanic and Atmospheric Administration (NOAA) proposed those regulations on August 3, 1995 (60 FR 39804). NOAA wishes to announce a Conference on the Proposed Rule for the Natural Resources Damage Assessment Provisions of the Oil Pollution Act of 1990, that will be held in two locations: in Washington, DC on August 30–31, 1995 and in San Francisco, California on September 6–7, 1995. The regulations have been significantly revised in response to comments received on the January 7, 1994 proposed rule. These meetings are designed to encourage discussion on the proposed rule and NOAA's new approach to natural resource damage assessment. For more information or to register for one of the Conference locations, please contact the conference coordinator at the telephone number below.

DATES: The meetings will be held August 30–31, 1995 in Washington, DC and September 6–7, 1995 in San Francisco, California.

ADDRESSES: The August 30–31 meeting will be held at the U.S. Department of Commerce, Herbert C. Hoover Bldg., Main Auditorium, 14th & Constitution Ave., NW, Washington, DC. The September 6–7 meeting will be held at Fort Mason Center, Landmark Building C 2nd Floor, Room 215, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: David Chapman, Conference Coordinator, Damage Assessment Center, telephone (301) 713–3038, Ext. 200; FAX (301) 713–4387.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides for the prevention of, liability for, removal of, and compensation for the discharge, or substantial threat of discharge, of oil into or upon the navigable waters of the United States, adjoining shorelines, or the Exclusive Economic Zone. Section 1006(e) requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, to develop regulations establishing procedures for natural resource trustees to use in the assessment of damages for injury to, destruction of, loss of, or loss of use of natural resources covered by OPA. Section 1006(b) provides for the designation of federal, state, Indian tribe and foreign natural resource trustees to determine resource injuries, assess natural resource damages (including the reasonable costs of assessing damages), present a claim, recover damages, and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship.

NOAA will hold a Conference on the Proposed Rule for the Natural Resource Damage Assessment provisions of the Oil Pollution Act of 1990 in two locations: in Washington, DC on August 30–31, 1995 and in San Francisco, California on September 6–7, 1995. The first day of the Conference, from 10:00 am to 5:30 pm, will be devoted to a presentation and explanation of the rule, ending with an initial question and answer session regarding specific issues relevant to the rule. The second day, from 9:00 am to 4:30 pm, will continue the question and answer session and will use two panel discussions to highlight specific aspects of restoration in the new rule. Topics include restoration of natural resources and their associated ecological and human services, focusing on the implications of the proposed rule and restoration techniques, methodologies, and case studies featuring successful projects.

These meetings are open to the public. Those with a direct interest in the assessment process are encouraged to attend, including representatives of industry, environmental groups, government agencies and the public. A synopsis of each meeting will be prepared and included in the administrative record of the rulemaking process.

Dated: August 16, 1995.

Terry D. Garcia,

General Counsel.

[FR Doc. 95–20637 Filed 8–21–95; 8:45 am]

BILLING CODE 3520–12–M

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 20

[PS–25–94]

RIN 1545–AS66

Requirements to Ensure Collection of Section 2056A Estate Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the additional requirements necessary to ensure the collection of the estate tax imposed under section 2056A(b) with respect to taxable events involving qualified domestic trusts described in section 2056A(a). The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by November 20, 1995. Outlines of topics to be discussed at the public hearing scheduled for January 16, 1996, at 10 a.m., must be received by December 26, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R: (PS–25–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R (PS–25–94), Internal Revenue Service, room 5228, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Susan Hurwitz, (202) 622–3090; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

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

The collections of information are in §§ 20.2056A–2T(d). This information is required by the IRS in order to ensure the collectibility of the estate tax imposed under section 2056A(b) in cases (1) where a bond or letter of credit security arrangement alternative is adopted and (2) where the qualified domestic trust holds foreign real property or the principal residence exclusion applies. This information will be used to monitor compliance with the additional regulatory requirements contained in § 20.2056A–2T(d)(1)(i) and (iv). The likely respondents will be trustees of qualified domestic trusts. Estimated total annual reporting burden: 6110 hours. The estimated annual burden per respondent varies from 30 minutes to 3 hours, depending upon individual circumstances, with an estimated average of 1.37 hours.

Estimated number of respondents: 4470.

Estimated annual frequency of responses: 1.

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Estate Tax Regulations (26 CFR part 20) relating to section 2056A. The temporary regulations contain rules relating to the additional requirements to ensure the collectibility of the estate tax imposed under section 2056A.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 16, 1996, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by November 20, 1995 and submit an outline of the topics to be discussed and the time to be devoted to each topic by December 26, 1995.

A period of 10 minutes will allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the proposed regulations is Susan Hurwitz, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 20 is proposed to be amended as follows:

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

Par. 1. The authority citation for part 20 continues to read in part as follows:

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

Par. 2. Section 20.2056A–2 is amended by adding paragraph (d) to read as follows:

§ 20.2056A–2 Requirements for qualified domestice trust.

* * * * *

(d) [The text of this proposed regulation is the same as the text of § 20.2056A–2T(d) published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–19865 Filed 8–21–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Abandoned Mine Land Reclamation (AMLR) Plan

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 receipt of a proposed amendment to the New Mexico AMLR plan (hereinafter, the ''New Mexico plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed additions and revisions to New Mexico's plan provisions and statute. New Mexico proposes to add plan provisions pertaining to contractor responsibilities, exclusion of certain sites from eligibility for reclamation under the New Mexico plan, and reports. It also proposes to amend its plan by revising the State abandoned mine land reclamation statute pertaining to the purpose of the statute, definitions, creation of the abandoned mine reclamation fund, objectives of the fund, acquisition and reclamation of land adversely affected by past mining practices, liens, and emergency powers. The amendment is intended to revise the New Mexico plan to be consistent with the corresponding Federal regulations and SMCRA, and to improve operational efficiency.

DATES: Written comments must be received by 4 p.m., m.d.t., September 21, 1995. If requested, a public hearing on the proposed amendment will be held on September 18, 1995. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on September 6, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Arthur W. Abbs at the address listed below.

Copies of the New Mexico plan, proposed amendment, and all written comments received in response to this document 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 Albuquerque Field Office.

Arthur W. Abbs, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102

Robert M. Evetts, AML Program Manager, Mining and Minerals Division, New Mexico Energy & Minerals Department, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Plan

On June 17, 1981, the Secretary of the Interior approved the New Mexico plan. General background information on the New Mexico plan, including the Secretary's findings, the disposition of comments, and the approval of the New Mexico plan can be found in the June 17, 1981, **Federal Register** (46 FR 31641).

II. Proposed Amendment

By letter dated July 24, 1995, New Mexico submitted a proposed amendment to its plan (administrative record No. NM–758) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment in response to a September 26, 1994, letter (administrative record No. NM–732) that OSM sent it in accordance with 30 CFR 884.15(d), and at its own initiative.

The plan sections that New Mexico proposes to add are: 874.16, contractor responsibilities; 875.16, exclusion of certain sites from eligibility for reclamation under the plan; 875.20, contractor responsibilities; and 886.23(c), reports. The plan provisions of the New Mexico Abandoned Mine Reclamation Act (Act) that New Mexico proposes to revise are: New Mexico Statute Annotated (NMSA) 69–25B–2, purpose of the Act; NMSA 69–25B–3, definitions; NMSA 69–25B–4, creation of the abandoned mine reclamation fund; NMSA 69–25B–6, objectives of the fund; NMSA 69–25B–7, acquisition and reclamation of land adversely affected by past mining practices; NMSA 69–25B–8, liens; and NMSA 69–25B–12, emergency powers.

Specifically, New Mexico proposes to revise its plan provisions as follows. At sections 874.16 and 875.20, it proposes that low bidders for abandoned mine land coal and noncoal projects would have to clear OSM's Applicant/Violator System (AVS) prior to New Mexico awarding them a contract. Any subcontractor receiving 10 percent or more of the total contract funding, and any contract inspector, would also be required to receive AVS clearance.

At section 875.16, New Mexico proposes that it could not expend any money from its abandoned mine reclamation fund for the reclamation of any project site that has been listed for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 or the Comprehensive Environmental Response Compensation and Liability Act of 1980.

At section 886.23(c), New Mexico proposes that it would submit to OSM a Form OSM–76, ''Abandoned Mine Land Problem Area Description,'' to report the accomplishments achieved through a project.

Also, New Mexico proposes to revise the plan provisions of the Act as follows. At NMSA 69–25B–2, it proposes to delete the legal citation for SMCRA and to delete the phrase ''prior to the enactment of that act and which'' from the provision which indicates that the purpose of the Act is ''to promote the reclamation of mined areas left without adequate reclamation prior to the enactment of that act and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment.''

At NMSA 69–25B–3, it proposes to revise its definitions for ''director'' and ''eligible lands and water'' and add a definition for ''emergency.''

At NMSA 69–25B–4, it proposes to delete the legal citation for SMCRA and to refer to the ''secretary of energy, minerals and natural resources'' rather than the ''secretary of energy and minerals.''

At NMSA 69–25B–6, it proposes to make stylistic changes, delete the legal citation for the Act, and delete the word ''coal'' in several instances so that the objectives of the State abandoned mine reclamation fund are to protect the public against the adverse effects of ''mining practices'' and ''mining development'' respectively rather than ''coal mining practices'' and ''coal development.''

At NMSA 69–25B–7, it proposes to make stylistic changes, delete the legal citation for the Act, and delete the word ''coal'' in several instances so that the section applies to the acquisition and reclamation of land adversely affected by ''past mining practices'' rather than ''past coal mining practices' and the acquisition and reclamation of ''refuse disposal sites'' and ''refuse'' respectively rather than ''coal refuse disposal sites'' and ''coal refuse.''

At NMSA 69–25B–8, it proposes to make stylistic changes and address liens for projects that mitigate adverse effects

of ''past mining practices'' rather than ''past coal mining practices.''

At NMSA 69–25B–12, it proposes to add a section setting forth emergency powers for the director of the Mining and Minerals Division.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.14 and 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the New Mexico plan.

1. Written Comments

Written comments should be specific, pertain only to the issues 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 Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. 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., m.d.t. on September 6, 1995. 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**. 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 testify have 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.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a pubic 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 by contacting the person 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

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. 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 this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact 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 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. Accordingly, this rule will ensure that existing requirements established by SMCRA or 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 in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 14, 1995.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–20723 Filed 8–21–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 944

Utah Abandoned Mine Land Reclamation (AMLR) Plan

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 receipt of a proposed amendment to the Utah AMLR plan (hereinafter, the ''Utah plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of the addition of new rules to the Utah plan concerning definitions of certain terms, general reclamation requirements for coal lands and waters, eligible lands and water prior to certification, certification of completion of coal sites, eligible lands and water subsequent to certification, exclusion of certain noncoal reclamation sites, extension of land acquisition authority and lien requirements to noncoal, limited liability, contractor responsibility, and reports. It also consists of editorial revisions and deletion of certain provisions concerning State reclamation grants. The amendment is intended to incorporate the additional flexibility afforded by SMCRA, and to improve operational efficiency.

DATES: Written comments must be received by 4 p.m. m.d.t., September 21, 1995. If requested, a public hearing on the proposed amendment will be held on September 18, 1995. Requests to present oral testimony at the hearing

must be received by 4 p.m., m.d.t., on September 6, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to James F. Fulton at the address listed below.

Copies of the Utah plan, the proposed amendment, and all written comments received in response to this document 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 Denver Field Division, Western Regional Coordinating Center.

James F. Fulton, Chief, Denver Field Division, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, Colorado 80202

Mary Ann Wright, Administrator, Abandoned Mine Reclamation Program, Department of Natural Resources, Division of Oil, Gas and Mining, 3 Triad Center, Suite 350, 355 West North Temple, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 672–5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah AMLR Plan

On June 3, 1983, the Secretary of the Interior approved the Utah plan. Information pertaining to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings, the disposition of comments, and the approval of the Utah plan can be found in the June 3, 1983, **Federal Register** (48 FR 24876). Subsequent actions concerning Utah's plan and plan amendments can be found at 30 CFR 944.20 and 944.25.

II. Proposed Amendment

By letter dated August 2, 1995 (administrative record No. UT–1071), Utah submitted a proposed amendment to its plan pursuant to SMCRA. Utah submitted the proposed amendment in response to OSM's 30 CFR 884.15(d) letter dated September 26, 1994 (administrative record No. UT–1011).

Utah is proposing to revise its AMLR plan by adding new provisions to the Utah Administrative Rules (Utah Admin. R.) 643–870–500 through 643–886–200. Specifically, Utah proposes to revise (1) Utah Admin. R. 643–870–500 by providing definitions for the terms ''eligible lands and water,'' ''left or abandoned in either an unreclaimed or inadequately reclaimed condition,'' and ''Secretary;'' (2) Utah Admin. R. 643–874–100, –110, –124 through –128, –130 through –132, –140 through –144, –150, and –160, by providing general reclamation requirements for coal lands and waters, including interim program and bankrupt surety coal sites, reclamation objectives and priorities, utilities and other facilities, limited liability, and contractor responsibility; (3) Utah Admin. R. 643–875–120 and –122 through –125, by providing eligibility requirements for noncoal lands and water prior to certification; (4) Utah Admin. R. 643–875–130 through –133, by providing requirements related to certification of completion of all coal-related reclamation; (5) Utah Admin. R. 643–875–140 through –142, –150 through –155, –160, –170, –180, –190, and –200, by providing eligibility requirements for lands and water subsequent to certification, including reclamation priorities for noncoal, exclusion of certain noncoal reclamation sites, land acquisition authority, lien requirements, limited liability, and contractor responsibility for noncoal; and (6) Utah Admin. R. 643–886–232.240, by providing a requirement for submission of Form OSM–76, ''Abandoned Mine Land Problem Area Description,'' upon project completion to report the accomplishments achieved through the project.

Utah also proposes editorial revisions at (1) Utah Admin. R. 643–877–141, pertaining to the extension of right of entry for emergency reclamation to noncoal; (2) Utah Admin. R. 643–879–141, –152.200, –153, and –154, pertaining to the authority of the Board of Oil, Gas and Mining (Board) or Division of Oil, Gas and Mining (Division) for certain actions related to the management of acquired land and disposition of reclaimed land; (3) Utah Admin. R. 643–882–132, pertaining to the authority of the Division to waive liens against reclaimed land; and (4) Utah Admin. R. 643–884–150, pertaining to submission to the Director of OSM of a Utah plan amendment.

In addition, Utah is proposing to delete provisions at Utah Admin. R. 643–886–130 through 190, pertaining to the grant period, annual submission of projects, grant application procedures, grant agreements, grant and budget revisions, and audits as they relate to State reclamation grants.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15(a) and 884.14(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Utah plan.

1. Written Comments

Written comments should be specific, pertain only to the issues 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 Denver Field Division, Western Regional Coordinating Center, will not necessarily be considered in the final rulemaking or included in the administrative record.

2. 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., m.d.t., September 6, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. 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**. 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 testify have 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.

3. 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 by contacting the person 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

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. 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 this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact 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 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. Accordingly, this rule will ensure that existing requirements established by SMCRA or 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 in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 11, 1995.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–20722 Filed 8–21–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 081595B]

Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Change in Assumed Pacific Halibut Discard Mortality Rate

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed change in assumed Pacific halibut discard mortality rate; request for comments.

SUMMARY: NMFS proposes to reduce the Pacific halibut discard mortality rate assumed for the 1995 hook-and-line Pacific cod fishery in the Bering Sea and Aleutian Islands management area (BSAI) from 12.5 percent to 11.5 percent. This action is necessary to implement the intent of the North Pacific Fishery Management Council (Council) to assess discard mortality rates observed in this fishery during the first half of 1995 and, if warranted, adjust the 12.5 assumed rate specified for this fishery to reflect more closely the 1995 observed rate.

DATES: Comments must be received by September 5, 1995.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. The final Environmental Assessment prepared for the 1995 BSAI groundfish total allowable catch specifications or the report prepared by the International Pacific Halibut Commission titled ''Halibut Discard Mortality Rates in the 1995 BSA Pacific Cod Hook-and-Line Fishery: Results From Inseason Data Analysis'' may be obtained from the same address, or by calling 907–586–7228. The final Stock Assessment and Fishery Evaluation (SAFE) report, dated November 1994, may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Susan Salveson, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 675 that implement the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Island area (FMP). The FMP was prepared by the Council and approved by NMFS under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

NMFS, in consultation with the Council, annually establishes Pacific halibut bycatch allowances for specified BSAI groundfish fisheries. The Director, NMFS, Alaska Region (Regional Director), monitors each fishery's halibut bycatch allowance using assumed discard mortality rates that are based on the best information available. NMFS published the 1995 halibut bycatch mortality allowances and assumed discard mortality rates in the **Federal Register** on February 14, 1995 (60 FR 8479) as part of the final 1995 specifications of groundfish and associated management measures. NMFS noted in this publication that the 12.5 percent discard mortality rate specified for the BSAI Pacific cod hook-and-line gear fishery would be subject to change pending the results of a mid-year analysis of halibut discard mortality rate data collected by NMFS-certified observers during the first half of 1995. The reasons and justification for this mid-year assessment are discussed in the February 14, 1995, final 1995 groundfish specifications.

Staff of the International Pacific Halibut Commission (IPHC) conducted an analysis of 1995 halibut viability data collected by NMFS-certified observers during the period January 1 to May 6. The results of this analysis are presented in a report titled ''Halibut Discard Mortality Rates in the 1996 (BSAI) Pacific Cod Hook-and-Line Fishery: Results From Inseason Data Analysis'' (see **ADDRESSES**). Results of this analysis indicate that a halibut discard mortality rate of 11.5 percent is more appropriate in estimating halibut bycatch mortality in the 1995 BSAI hook-and-line fishery for Pacific cod than the 12.5 percent rate established in the final 1995 groundfish specifications (February 14, 1995, 60 FR 8479). These

results were based on data collected by 32 observers from 26 different vessels, which represented 60 percent of the groundfish catch in the BSAI Pacific cod hook-and-line gear fishery through early May. The 11.5 percent discard mortality rate is a reduction from the 18 percent discard mortality rate previously estimated for this fishery based on observer data collected during 1992 and 1993. An estimate of the 1994 discard mortality rate has not been completed, because final 1994 observer data are not yet available. The IPHC believes that the apparent reduction in halibut discard mortality rates is a result of several factors. First, the hook-and-line gear fleet has gained a greater awareness of careful release procedures that increase survival rates of discarded halibut. In 1993, regulations at § 675.7(m) were implemented to require vessels to follow careful release procedures (58 FR 28799, May 17, 1993) and the hook-and-line industry has made an effort to inform vessel operators and crew of these mandatory requirements.

Second, a greater number of vessels is using swivels where the gangion ties into the groundline or the gangion connects to the hook. The swivels help prevent halibut from twisting and winding the gangion around the groundline, thus providing greater movement of the halibut and enhancing a fish's ability to avoid sand flea predation. Observer data from 1995, as well as previous years, suggest that sand flea predation is a significant contributor to the overall mortality of halibut taken as bycatch in the hook-and-line gear fisheries.

Third, the 1995 BSAI hook-and-line fleet participated in a voluntary program to monitor halibut discard mortality rates inseason on a vessel-by-vessel basis. This action provided feedback to the individual vessels when observer data suggested that bycatch halibut was improperly handled.

At its June 1995 meeting, the Council reviewed the IPHC's analysis of 1995 observer data and recommended that NMFS reduce the discard mortality rate for the BSAI Pacific cod hook-and-line gear fishery from 12.5 percent to 11.5 percent. NMFS concurs with the analytical results of the IPHC's assessment, as well as the Council's recommendation. Accordingly, NMFS proposes to revise Table 9 of the final 1995 groundfish specifications published February 14, 1995 (60 FR 8479), as follows:

TABLE 9.—ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES DURING 1995

Hook-and-line gear fisheries	Assumed mortality (percent)
Rockfish	24.0
Pacific cod	11.5
Greenland turbot	19.0
Sablefish	17.0
Trawl Gear Fisheries:	
Midwater pollock	89.0
Non-pelagic pollock	77.0
Yellowfin sole	76.0
Rock sole, flathead sole, other flatfish	75.0
Rockfish	69.0
Pacific cod	65.0
Atka mackerel	59.0
Arrowtooth	49.0
Greenland Turbot	48.0
Pot Gear Fisheries:	
Pacific cod	8.0

NMFS proposes to recalculate the 1995 halibut bycatch mortality for the BSAI Pacific cod hook-and-line gear fishery using the 11.5 percent assumed discard mortality rate. Based on catch and observer data through mid-July 1995, the BSAI Pacific cod hook-and-line fleet has taken 3,613 metric tons (mt) of halibut bycatch. This equates to 452 mt bycatch mortality using the 12.5 percent mortality rate assumption and 415 mt bycatch mortality using the 11.5 mortality rate assumption. Using this latter assumption, 310 mt of halibut mortality remains of the 725 mt halibut bycatch mortality allowance specified for this fishery in 1995.

NMFS estimates that less than 2,200 mt of halibut bycatch will be taken by the Pacific cod hook-and-line gear fleet during the remainder of 1995 based on the assumption that 21,000 mt of groundfish may be harvested by this fleet during the remainder of 1995 at a halibut bycatch rate of 103.26 kg per mt of groundfish, as experienced in the 1994 fall fishery. Given the projection for another 2,200 mt of halibut bycatch during the remainder of 1995, NMFS anticipates that an additional 253 mt of halibut bycatch mortality would result using the 11.5 percent discard mortality rate, compared to 275 mt of halibut mortality, if a 12.5 percent discard mortality rate were used. Neither assumption for discard mortality rate would result in the attainment of the 725 mt halibut bycatch allowance before the amount of Pacific cod allocated to vessels using hook-and-line or pot gear is reached.

Classification

This action is authorized under 50 CFR part 675.20 and is exempt from review under E.O. 12866.

NMFS prepared an environmental assessment (EA) on the 1995 groundfish specifications. The Assistant Administrator for Fisheries, NOAA, concluded that no significant impact on the environment will result from their implementation. A copy of the EA is available (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 et seq.

Dated: August 16, 1995.

Richard W. Surdi,

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

[FR Doc. 95–20769 Filed 8–21–95; 8:45 am]

BILLING CODE 3510–22–W

Notices

Federal Register
Vol. 60, No. 162
Tuesday, August 22, 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

Forms Under Review by Office of Management and Budget

August 18, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

• Rural Utilities Service
Borrower Investments-Telecommunications Loan Program
Individuals or households; Business or other for-profit; Not-for-profit institutions; 40 responses; 380 hours
Cheryl Gamboney (202) 720–0415

• Consolidated Farm Service Agency
7 CFR 701 Conservation and Environmental Programs—Addendum
FIP–11, FIP–12, ASCS–18, AD–245, ACP–13, ACP–153A, ACP–310, ACP–311
Farms; 2,938,650 responses; 736,130 hours
Larry Howard (202) 720–3264

Extension

• Food and Consumer Service
Application for Participation (FNS–66), Agreement Between School Food Authority and USDA (FNS–67)
FNS–66, FNS–67
Not-for-profit; 1,600 responses; 1,000 hours
Angella Love (703) 305–2607

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 95–20767 Filed 8–21–95; 8:45 am]

BILLING CODE 3410–01–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations on Records Release

AGENCY: Assassination Records Review Board.

ACTION: Notice of Formal Determinations.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on August 2 and August 3, 1995, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act.) By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT:

T. Jeremy Gunn, Acting General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, 600 E Street, NW., Washington, DC 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the *President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107.9(c)(3) (1992). On August 2 and August 3, 1995, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives. For each document, the number of releases of previously redacted information is noted as well as the number of sustained postponements.

REVIEW BOARD DETERMINATIONS—CIA DOCUMENTS

Record No.	ARRB Releases	Sustained post-ponements	Status of document	New review date
104–10004–10195	3	3	Postponed in part	12/95
104–10004–10199	16	6	Postponed in part	12/95
104–10015–10013	25	0	Open in full	N/A
104–10015–10014	18	0	Open in full	N/A
104–10015–10015	8	0	Open in full	N/A
104–10015–10019	4	0	Open in full	N/A
104–10015–10027	10	0	Open in full	N/A
104–10015–10047	4	0	Open in full	N/A
104–10015–10048	16	1	Postponed in part	12/95
104–10015–10061	20	0	Open in full	N/A
104–10015–10070	6	2	Postponed in part	08/2005
104–10015–10074	1	0	Open in full	N/A
104–10015–10080	1	0	Open in full	N/A

REVIEW BOARD DETERMINATIONS—CIA DOCUMENTS—Continued

Record No.	ARRB Releases	Sustained post-ponements	Status of document	New review date
104–10015–10091	8	3	Postponed in part	12/95
104–10015–10092	0	1	Postponed in part	12/95
104–10015–10114	4	1	Postponed in part	12/95
104–10015–10118	4	2	Postponed in part	12/95
104–10015–10157	2	2	Postponed in part	12/95
104–10015–10173	16	4	Postponed in part	08/2005
104–10015–10176	3	1	Postponed in part	12/95
104–10015–10177	16	0	Open in full	N/A
104–10015–10188	13	7	Postponed in part	08/2005
104–10015–10212	1	1	Postponed in part	08/2005
104–10015–10304	6	0	Open in full	N/A
104–10015–10359	8	0	Open in full	07/21/2015 10:51:19 a.m.
104–10018–10040	8	3	Postponed in part	2017
104–10018–10064	4	3	Postponed in part	12/95
104–10018–10103	6	1	Open in full	N/A
104–10052–10056	60	0	Open in full	N/A
104–10062–10001	19	19	Open in full	N/A
104–10086–10002	8	1	Postponed in part	08/2005
104–10086–10003	6	0	Open in full	N/A
104–10086–10005	5	0	Open in full	N/A
104–10095–10001	29	19	Postponed in part	12/95
104–10096–10001	31	0	Open in full	N/A
104–10125–10001	1	2	Postponed in part	12/95
104–10125–10002	5	1	Postponed in part	12/95

Dated: August 15, 1995.

David G. Marwell,

Executive Director.

[FR Doc. 95–20720 Filed 8–21–95; 8:45 am]

BILLING CODE 6820–TD–M

Formal Determinations on Records Release

AGENCY: Assassination Records Review Board.

ACTION: Assassination Record Designation.

SUMMARY: On August 3, 1995, the Assassination Records Review Board (Review Board) designated certain documents as ''assassination records'' under the *President John F. Kennedy Assassination Records Collection Act of 1992* (JFK Act.) By issuing this notice, the Review Board complies with Section 1400.8 of the Guidance for Interpretation and Implementation of the JFK Act that requires the Review Board to publish in the **Federal Register** its determinations regarding which records meet the definition of assassination records within 30 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, Acting General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, 600 E Street, NW., Washington, DC 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: On August 3, 1995, the Review Board, by unanimous vote, designated all serials dated after January 1, 1960, in sections 1–16 of the FBI Headquarters file on Sam Giancana, 92–3171, as ''assassination records'' pursuant to sections 7(i)(2)(A) and 9(c)(1)(A) of the JFK Act and sections 1400.1 and 1400.8 of the Guidance for Interpretation and Implementation of the JFK Act (to be codified at 36 CFR part 1400). In not designating any materials prior to 1960 as ''assassination records,'' the Review Board relied upon the advice of its staff, which conducted a thorough review of sections 1–16, that the pre-1960 materials were not reasonably related to President John F. Kennedy or his assassination. The FBI has already recognized sections 16–37 as ''assassination records'' and they are being processed under the JFK Act.

Review Board Decision

FBI Headquarters file 92–3171 for the period January 1, 1960, through January 1, 1963, is designated an ''assassination record.''

Dated: August 16, 1995.

David G. Marwell,

Executive Director, Assassination Records Review Board.

[FR Doc. 95–20721 Filed 8–21–95; 8:45 am]

BILLING CODE 6820–TD–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 757]

Grant of Authority; Establishment of a Foreign-Trade Zone; Palm Beach County, Florida

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Palm Beach County Department of Airports, on behalf of Palm Beach County, Florida (the Grantee), has made application to the Board (FTZ Docket 22–94, 59 FR 28842, 6/3/94; amended 1/9/95, 60 FR 3390, 1/17/95), requesting the establishment of a foreign-trade zone at sites in Palm Beach County, Florida, within the West Palm Beach Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal**

Register and the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 209, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 11th day of August 1995.

Foreign-Trade Zones Board.

Ronald H. Brown,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 95–20803 Filed 8–21–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 763]

Grant of Authority for Subzone Status; Amoco Pipeline Company (Crude Oil Storage Terminal); Manhattan, IL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Illinois International Port District, grantee of Foreign-Trade Zone 22, for authority to establish special-purpose subzone status at the crude oil storage terminal of Amoco Pipeline Company, in Manhattan, Illinois, was filed by the Board on December 14, 1994, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 41–94, 59 FR 66890, 12–28–94); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 22H) for storage and transshipment activity at the Amoco Pipeline Company crude oil storage terminal, in Manhattan, Illinois, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 14th day of August 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–20807 Filed 8–21–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 762]

Grant of Authority for Subzone Status; Amoco Oil Company (Oil Refinery); Whiting, IN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Indiana Port Commission, grantee of Foreign-Trade Zone 152, for authority to establish special-purpose subzone status at the oil refinery complex of Amoco Oil Company, in Whiting, Indiana, was filed by the Board on July 9, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 30–93, 58 FR 39006, 7–21–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 152B) at the Amoco Oil Company refinery complex, in Whiting, Indiana, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000–# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix D);
—Products for export; and,
—Products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 14th day of August 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–20806 Filed 8–21–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 765]

Revision of Grant of Authority; Subzone 122C; Neste Trifinery Petroleum Services (Oil Refinery); Corpus Christi, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Board (the Board) authorized subzone status at the oil refinery of Neste Trifinery Petroleum Services in Corpus Christi, Texas, in 1985 (Subzone 122C, Board Order 310, 50 FR 38020, 9/19/85);

Whereas, the Port of Corpus Christi Authority, grantee of FTZ 122, has requested pursuant to § 400.32(b)(1)(i), a

revision (filed 6/26/95, A(32b1)–10–95; FTZ Doc. 41–95, assigned 8/4/95) of the grant of authority for FTZ Subzone 122C which would make its scope of authority identical to that recently granted for FTZ Subzone 199A at the refinery complex of Amoco Oil Company, Texas City, Texas (Board Order 731, 60 FR 13118, 3/10/95); and,

Whereas, the request has been reviewed and the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation of the Executive Secretary, and approves the request;

Now therefore, the Board hereby orders that, subject to the Act and the Board's regulations, including § 400.28, Board Order 310 is revised to include the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery (Subzone 122C) shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to Subzone 122C, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000 - # 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (FTZ staff report, Appendix B);
—Products for export; and,
—Products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option for Subzone 122C is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 14th day of August 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–20805 Filed 8–21–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 761]

Grant of Authority for Subzone Status; Amoco Oil Company (Oil Refinery), Yorktown, VA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Virginia Port Authority, grantee of Foreign-Trade Zone 20, for authority to establish special-purpose subzone status at the oil refinery complex of Amoco Oil Company, in Yorktown, Virginia, was filed by the Board on May 19, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 21–93, 58 FR 31009, 5–28–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 20C) at the Amoco Oil Company refinery complex, in Yorktown, Virginia, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000 - # 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix D);
—Products for export; and,
—Products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 14th day of August 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–20808 Filed 8–21–95; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Announcement of the American Petroleum Institute's Standards Activities

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of intent to develop or revise standards and request for public comment and participation in standards development.

SUMMARY: The American Petroleum Institute, with the assistance of other interested parties, continues to develop standards, both national and international, in several areas. This notice lists the standardization efforts currently being conducted. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of API is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend the standards referenced in this notice.

SUPPLEMENTARY INFORMATION:

Background

The American Petroleum Institute develops and publishes voluntary standards for equipment, operations, and processes. These standards are used by both private industry and by governmental agencies. All interested persons should contact in writing the appropriate source as listed for further information. Currently the following efforts are being conducted:

- General Committee on Pipelines.

Risk Management for Pipelines

500 Classification of Locations for Electrical Installations at Petroleum Facilities, Recommended Practice for
1117 Lowering In-Service Pipelines
1123 Development of Public Education Programs by Hazardous Liquid PL Operators
1129 Pipeline Integrity Standard

FOR FURTHER INFORMATION CONTACT: Prentiss Searles, Manufacturing, Distribution, and Marketing, American

Petroleum Institute, 1220 L Street, NW., Washington, DC 20005.

- General Committee on Marketing.

Pipeline Meter Provers
Recommended Practice for Installation of Service Station CNG Equipment
1529 Aviation Fueling Hose
1581 Specifications and Qualifications Procedures for Aviation Jet Fuel/Separators
1604 Removal & Disposal of Used Underground Storage Tanks
1615 Installation of Underground Petroleum Storage Tanks
1628 A Guide to the Assessment and Remediation of Underground Petroleum Releases
1632 Cathodic Protection of Underground Storage Tanks and Piping Systems

FOR FURTHER INFORMATION CONTACT: Douglas Read, Manufacturing, Distribution, and Marketing, American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005.

- General Committee on Refining.

Technical Data Book, Petroleum Refining
500 Classification of Locations for Electrical Installations at Petroleum Facilities
510 Pressure Vessel Inspection Code
521 Guide for Pressure-Relieving & Depressurizing Systems
530 Calculation of Heater Tube Thickness in Petroleum Refineries
536 Post Combustion NO_X
546 Form-Wound Brushless Synchronous Motors—500 Horsepower and Larger
553 Control Valve Applications
556 Fired Heaters and Steam Generators
571 Recognition of Conditions Causing Deterioration or Failure
572 Inspection of Pressure Vessels
574 Inspection of Piping, Tubing, Valves, and Fittings
575 Inspection of Atmospheric and Low-Pressure Storage Tanks
576 Inspection of Pressure-Relieving Devices
577 Inspection of Welding
578 Construction Material Quality Assurance
579 Fitness-for-Service
580 Risk-Based Inspection
591 User Acceptance of Refinery Valves
594 Water and Wafer-Lug Check Valves
598 Valve Inspection and Testing
600 Steel Gate Valves—Flanged and Butt-Welding Ends
602 Compact Steel Gate Valves
607 Fire Test for Soft-Seated Quarter-Turn Valves
609 Butterfly Valves: Double Flanged, Lug and Wafer-type
611 General Purpose Steam Turbines
614 Lubrication, Shaft-Sealing and Control-Oil Systems for Special Applications
616 Gas Turbines for Refinery Services
619 Rotary-Type Positive Displacement Compressors for General Refinery Services
620 Design and Construction of Large, Welded, Low-Pressure Storage Tanks
650 Welded, Steel Tanks for Oil Storage
653 Tank Inspection, Repair, Alt. & Reconstruction
660 Shell and Tube Heat Exchangers
661 Air-Cooled Heat Exchangers
662 Plate-Type Heat Exchangers
671 Special Purpose Couplings
672 Packaged, Integrally Geared (Centrifugal Air Compressors) for General Refinery Service
673 Special Purpose Fans
677 General-Purpose Gear Units for Refinery Service
685 Sealless Centrifugal Pumps
686 Installation of Mechanical Equipment
941 Steels for Hydrogen Service at Elevated Temperatures and Pressures in Petroleum Refineries and Petrochemical Plants
945 Avoiding Environmental Cracking in Amine Units
2000 Venting Atmospheric and Low-Pressure Storage Tanks: Nonrefrigerated and Refrigerated
2508 Design and Construction Ethane & Ethylene Installations

FOR FURTHER INFORMATION CONTACT: Ron Chittim or Prentiss Searles, Manufacturing, Distribution, and Marketing, American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005.

- Safety and Fire Protection Subcommittee.

752 Management of Hazards Associated with Location of Process Plant Buildings
2001 Fire Protection in Refineries
2009 Safe Welding and Cutting Practices in Refineries, Gasoline Plants, and Petrochemical Plants
2023 Guide for Safe Storage and Handling of Heated Petroleum Derived Asphalt Products and Crude Oil Residue
2026 Safe Descent Onto Floating Roofs of Tanks in Petroleum Service
2027 Ignition Hazards Involved in Abrasive Blasting of Atmospheric Hydrocarbon Tanks in Service
2030 Guidelines for Application of Water Spray Systems for Fire Protection in Petroleum Industry
2201 Procedures for Welding or Hot Tapping on Equipment in Service
2217A Guidelines for Work in Inert Confined Spaces in the Petroleum Industry
2219 Safe Operating Guidelines for Vacuum Trucks in Petroleum Service
2221 Manager's Guide to Implementing a Contractor Safety Program
2350 Overfill Protection for Petroleum Storage Tanks
2510A Fire Protection Considerations for the Design and Operation of Liquified Petroleum (LPG) Storage Facilities

FOR FURTHER INFORMATION CONTACT: Andrew Jaques or Ken Leonard, Health and Environmental Affairs, Safety and Fire Protection, American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005.

- Committee on Petroleum Measurement.

Chapter 4.2—Conventional Pipe Provers
Chapter 4.3—Small Volume Provers
Chapter 4.4—Tank Provers
Chapter 4.5—Master-Meter Provers
Chapter 4.6—Pulse Interpolation
Chapter 5.1—General Consideration for Measurement by Meters
Chapter 5.3—Measurement of Liquid Hydrocarbons by Turbine Meters
Chapter 5.4—Accessory Equipment for Liquid Meters
Chapter 10.4—Determination of Sediment and Water in Crude Oil by the Centrifuge Method (Field Procedure)
MPMS Chapter 12.2 (Parts 1–5)—Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors
MPMS Chapter 12.3—Volumetric Shrinkage Resulting from Blending Light Hydrocarbons with Crude Oils
MPMS Chapter 14.3 Part 2—Specification and Installation Requirements for Orifice Plates, Meter Tubes and Associated Fittings
MPMS Chapter 21.2—Liquid Flow Measurements Using Electronic Metering Systems
MPMS Chapter 19.2—Evaporation Loss from Internal and External Floating Roof Storage Tanks
Testing Protocol for Roof Seals and Fittings—Internal and External Floating Roof Tanks

FOR FURTHER INFORMATION CONTACT: J.C. Beckstrom or Steve Chamberlain, Exploration and Production Department, American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005.

• General Committee on Exploration and Production Oil field Equipment and Materials Standards.

1B Oil Field V-Belting
2A–WSD Planning, Designing and Constructing Fixed Offshore Platforms—Working Stress Design
2A–LRFD Planning, Designing and Constructing Fixed Offshore Platforms—Load and Resistance Factor Design
13C Drilling Fluid Processing Equipment (under development)
13I Standard Procedure for Laboratory Testing Drilling Fluids
13J Testing Heavy Brines
14F Design and Installation of Electrical Systems for Offshore Production Platforms
15LR Low Pressure Fiberglass Line Pipe
15TR Fiberglass Tubing (under development)
16A Specification for Drill Through Equipment
16F Marine Drilling Riser Equipment (under development)
16R Design, Rating and Testing Marine Drilling Riser Couplings (under development)
xxx Temperature Effects of Non-Metallics in Drill Through Equipment (under development)
17D Subsea Wellhead and Christmas Tree Equipment
17F Subsea Control Systems (under development)
117H ROV Interfaces with Subsea Equipment (under development)
17I Installation of Subsea Control Umbilicals (under development)
17J Specification for Flexible Pipe (under development)

• Drilling and Production Practices.

27 Determining Permeability of Porous Media (to be combined with API 40)
31 Standard Format For Electromagnetic Logs
33 Standard Calibration & Format For Gamma Ray & Neutron Logs
40 Core Analysis Procedures (to be combined with API 27)
43 Evaluation of Well Perforator Systems
44 Sampling Petroleum Reservoir Fluids
45 Analysis of Oil Field Waters
49 Drilling & Drill Stem Testing of Wells Containing Hydrogen Sulfide
50 Protection of the Environment For Gas Processing Plant Operations
51 Protection of the Environment For Production Operations
53 Blowout Prevention Equipment Systems for Drilling Wells
59 Well Control Operations
64 Diverter System Equipment and Operations
65 Standard Calibration of Gamma Ray Spectroscopy Logging Instruments and Format for K–U–Th Logs
66 Exploration and Production Data Digital Interchange
D12A API Well Number & Standard State, County, Offshore Area Codes
Model Form of Offshore Operating Agreement
xx Well Servicing/Workover Operations Involving Hydrogen Sulfide (under development)
xx Rheology of Cross Linked Fracturing Fluids (under development)
2T Planning, Designing and Constructing Tension Leg Platforms
4F Drilling and Well Servicing Structures
5A3 Thread Compounds for Casing, Tubing, and Line Pipe
5A5 Field Inspection of New Casing, Tubing, and Plain End Drill Pipe
5B Threading, Gaging, and Thread Inspection of Casing, Tubing, and Line Pipe Threads
5C6 Welding Connectors to Pipe (under development)
5C7 Recommended Practice for Coiled Tubing Operations in Oil & Gas Well Service (under development)
SD Drill Pipe
5L Line Pipe
5LC CRA Line Pipe
5Ld CRA Clad or Lined Steel Pipe
5L9 Unprimed External Fusion Bonded Epoxy Coating of Line Pipe (under development)
6A Valves and Wellhead Equipment
6AV1 Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service (under development)
6D Pipeline Valves (Steel Gate, Plug, Ball and Check Valves)
7 Rotary Drill Stem Elements
7A1 Testing of Thread Compound for Rotary Shouldered Connections
7G Drill Stem Design and Operating Limits
7K Drilling Equipment
7L Procedures for Inspection, Maintenance, Repair and Remanufacture of Drilling Equipment
8A Drilling and Production Hoisting Equipment
8B Procedures for Inspection, Maintenance Repair, and Remanufacture of Hoisting Equipment
8C Drilling and Production Hoisting Equipment (PSL 1 and PSL 2)
9B Application, Care, and Use of Wire Rope for Oil Field Services
10B Cement Testing (under development)
1IAX Subsurface Sucker Rod Pumps and Fittings
11E Pumping Units
11S Operating, Maintenance and Troubleshooting of Electric Submersible Pump Installations
11S3 Electric Submersible Pump Installations
11S4 Sizing and Selection of Electric Submersible Pump Installations
500 Classification of Locations for Electrical Installations at Petroleum Facilities
xxx Oilfield Packers (under development)
xxx Inspection and Maintenance of Production Piping (under development)
13B–1 Standard Procedure for Field Testing Water-Based Drilling Fluids
13B–2 Standard Procedure for Field Testing Oil-Based Drilling Fluids
xx Evaluation of Cartridge Filters (E&P Operations) (under development)
xx Cargo Handling at Offshore Facilities (under development)
xx Long Term Conductivity Testing of Proppants (under development)

ADDRESSES: Jim Greer/Chuck Liles, Exploration & Production, American Petroleum Institute, 700 North Pearl, Suite 1840 (LB 382), Dallas, TX 75201–2845.

FOR FURTHER INFORMATION CONTACT: Contact the following persons by writing for information on indicated standards at the above address: Jim Greer—API 6, 16 and 17 series standards; Chuck Liles—API Drilling and Production Practices; Mike Loudermilk—API 1B, 11, 12 and 14 series; Randy McGill—API 5 and 15 series; Jennifer Six—API 4, 7, 8, 9, 10 and 13 series; Mike Spanhel—API 2 series.

Authority: 15 U.S.C. 272.

Dated: August 16, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–20739 Filed 8–21–95; 8:45 am]

BILLING CODE 3510–13–M

[Docket No. 950802199–5199–01]

RIN 0693–XX10

Proposed Withdrawal of Eighteen Federal Information Processing Standards (FIPS)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: The following Federal Information Processing Standards (FIPS) are proposed for withdrawal from the FIPS series:

—FIPS 2–1, Perforated Tape Code for Information Interchange (ANSI X3.6–1965/R1991)

—FIPS 13, Rectangular Holes in Twelve-Row Punched Cards (ANSI X3.21–1967/R1991)
—FIPS 14–1, Hollerith Punched Card Code (ANSI X3.26–1980/R1991)
—FIPS 26, One-Inch Perforated Paper Tape for Information Interchange (ANSI X3.18–1967/R1990)
—FIPS 27, Take-Up Reels for One-Inch Perforated Tape for Information Interchange (ANSI X3.20–1967/R1990)
—FIPS 32–1, Character Sets for Optical Character Recognition (OCR) (ANSI X3.2–1970/R1976, X3.17–1981, and X3.49–1975/R1982)
—FIPS 33–1, Character Set for Handprinting (ANSI X3.45–1982)
—FIPS 40, Guideline for Optical Character Recognition Forms
—FIPS 54–1, Computer Output Microform (COM) Formats and Reduction Ratios, 16mm and 105mm (ANSI/AIIM MS5–1991 and MS14–1988)
—FIPS 82, Guideline for Inspection and Quality Control for Alphanumeric Computer-Output Microforms (ANSI/AIIM MS1–1980)
—FIPS 84, Microfilm Readers (ANSI/AIIM (NMA) MS20–1979)
—FIPS 85, Optical Character Recognition (OCR) Inks (ANSI X3.86–1980)
—FIPS 89, Optical Character Recognition (OCR) Character Positioning (ANSI X3.93M–1981)
—FIPS 90, Guideline for Optical Character Recognition (OCR) Print Quality (ANSI X3.99–1983)
—FIPS 107, Local Area Networks: Baseband Carrier Sense Multiple Access with Collision Detection Access Method and Physical Layer Specifications and Link Layer Protocol (ANSI/IEEE 802.2 and 802.3)
—FIPS 108, Alphanumeric Computer Output Microform Quality Test Slide (AIIM MS28–1983)
—FIPS 129, Optical Character Recognition (OCR)—Dot Matrix Character Sets for OCR–MA (ANSI X3.111–1986)
—FIPS 149, General Aspects of Group 4 Facsimile Apparatus (ANSI/EIA–536–1988)

These FIPS adopt voluntary industry standards for Federal government use. In some cases, the FIPS documents have not been updated to reference current or revised voluntary industry standards. In other cases, commercial products implementing the voluntary industry standards, such as punched cards, paper tape, optical character recognition equipment, and microfilm readers, are widely available; as a result, it is no longer necessary for the government to mandate standards in these areas.

Withdrawal means that the FIPS will no longer be part of a subscription series that is provided by the National Technical Information Service, and that NIST will no longer be able to support the standards by answering implementation questions or updating the FIPS when the voluntary industry standards are revised. Current voluntary industry standards should be used by agencies in their procurement actions where appropriate, in accordance with OMB Circular A–119, Federal Participation and Use of Voluntary Standards.

Prior to the submission of this proposed withdrawal to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

Interested parties may obtain copies of these standards from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, telephone (703) 487–4650.

DATES: Comments on this proposed withdrawal must be received on or before November 20, 1995.

ADDRESSES: Written comments concerning the withdrawal should be sent to: Acting Director, Computer Systems Laboratory, ATTN: Withdrawal of Eighteen FIPS, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Ms. Shirley M. Radack, telephone (301) 975–2833, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Dated: August 16, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–20738 Filed 8–21–95; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

[I.D. 072595A]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Renewal of an experimental fishing permit.

SUMMARY: NMFS announces the renewal of experimental fishing permit (EFP) #94–2 to Northwest Food Strategies (NWFS), and participating vessels and shoreside processors. Under the renewal process, a new EFP #95–1, will be issued to authorize vessels and shoreside processors to voluntarily retain Pacific salmon caught as bycatch, which would otherwise be discarded as prohibited species under current regulations, for donation to food bank programs. This action is necessary to allow for the collection of additional data that may be used to evaluate proposed regulations.

ADDRESSES: Copies of the EFP are available from: Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802; Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and its implementing regulations at 50 CFR part 675 authorize issuance of EFPs for fishing that would otherwise be prohibited. Under this authority, NMFS announced the approval of EFP #94–2 in the **Federal Register** on August 2, 1994 (59 FR 39326) to test the feasibility of voluntary retention of salmon caught as bycatch for donation to foodbanks to feed economically disadvantaged individuals. This EFP expired after the 1995 BSAI pollock roe season. Preliminary results from this EFP indicated that voluntary retention and processing successfully reduced salmon discard amounts. However, the collection of additional data could assist NMFS in evaluating proposed regulations currently being considered by the Council. Therefore, this renewal will allow the collection of data that may be used to evaluate Amendment 26 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 29 to the Fishery Management Plan for Groundfish of the Gulf of Alaska that authorizes a

voluntary Salmon Donation Program (SDP) being considered by the North Pacific Fishery Management Council (Council). This renewal authorizes the continuation of this EFP for 1 more year. During the extended effectiveness period of the EFP, NMFS will initiate review of proposed Amendments 26 and 29. If approved, these amendments would implement a permanent SDP for 1996 and beyond.

The procedures for renewing EFPs are contained in the regulations at § 672.6. NMFS received a request from NWFS to renew the EFP for an additional year on May 9, 1995. NMFS forwarded this request to the Alaska Fishery Science Center, which determined that this application constitutes a valid fishing experiment. NWFS informed the Council of its intent to renew the EFP for a year to allow for the continued collection of data regarding the feasibility of the SDP. After reviewing NWFS' request for a renewal at its June 1995 meeting, the Council recommended that the EFP be approved.

The Director, Alaska Region, NMFS (Regional Director) has reviewed the Council's recommendation and issued an EFP to NWFS and the participating vessels and shoreside processors. This EFP authorizes these vessels, shoreside processors, and NWFS to retain Pacific salmon caught as bycatch during following trawl fisheries: (1) The 1995 BSAI pollock non-roe season fishery; (2) the 1996 BSAI directed pollock roe season fishery; and (3) the 1996 BSAI directed Pacific cod fishery, for the purpose of providing salmon products to economically disadvantaged individuals via foodbanks.

Classification

The Regional Director determined that renewal of this EFP will not affect species listed as threatened or endangered, or areas that are critical habitat for these species under the Endangered Species Act in a way that was not already considered in previous formal and informal section 7 consultations.

This action is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 7, 1995.

Richard W. Surdi,

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

[FR Doc. 95–20699 Filed 8–21–95; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Friday, September 29, 1995, at the Sheraton Tara Hotel, Winter Harbor Room, 363 Maine Mall Road, South Portland, Maine 04106. The purpose of the meeting is to discuss a project proposal on discrimination against language minority students.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Barney Berubé, 207–287–5980, or Edward Darden, Acting Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 11, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–20704 Filed 8–21–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the New York State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee to the Commission will convene at 12:30 p.m. and adjourn 5:30 p.m. on the Thursday, September 14, 1995, at the Javits Federal Building, Conference Room, 26 Federal Plaza, New York, New York 10278. The purpose of the meeting is to plan and consider a project proposal on fair housing issues with a briefing on the subject by invited speakers.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Setsuko Nishi, 718–951–5466, or Edward Darden, Acting Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 11, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–20705 Filed 8–21–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 1 p.m. and adjourn 5 p.m. on Wednesday, September 13, 1995, at the Providence Marriott, Charles and Orms Streets, Providence, Rhode Island 02904. The purpose of the meeting is to brief the Committee members on the Commission and national Chairpersons' conference and to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Ms. Sarah A. Murphy, 401–751–1851, or Edward Darden, Acting Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 11, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–20706 Filed 8–21–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn 4:00 p.m. on Thursday,

September 28, 1995, at the Charleston Marriott, 200 Lee Street, East, Charleston, West Virginia 25301. The purpose of the meeting is to release the report, Rising Racial Tensions in Logan County, West Virginia; to brief Committee members on the Commission and the national Chairpersons' conference; and to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Joan Hairston, 304–752–3422, or Edward Darden, Acting Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 11, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–20707 Filed 8–21–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by September 6, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. 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: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: August 16, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Expedited.
Title: Remedial Education In Higher Education Institutions
Frequency: Not-for-Profit institutions.
Reporting Burden:
Responses: 1.
Burden Hours: 430.
Recordkeeping burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: Purpose is to obtain a national picture about the extent and characteristics of remedial education at the college level. Information will be of interest to federal and state policy makers as they consider the appropriate role for remedial education in higher education. Respondents will be higher education institutions.

[FR Doc. 95–20690 Filed 8–21–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: The expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by September 6, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. 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: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provides interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping

burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: August 16, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Expedited.
Title: Distance Education Courses Offered by Higher Education Institutions.
Frequency: One Time.
Affected Public: Not for Profit institutions.
Reporting Burden:
Responses: 1.
Burden Hours: 379.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: Purpose is to obtain basic national information about higher education institutions' distance education course offerings. Information will provide higher education policy-makers and administrators will data to inform their decisions concerning distance education course offerings.

[FR Doc. 95–20688 Filed 8–21–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by September 30, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. 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: Sectoin 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517 requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Groups, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: August 16, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: Understanding Classroom Instructional Practices
Frequency: One Time.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 1.
Burden Hours: 320.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This information will be used to help NCES improve its bank of items, instruments, and methods for measuring opportunity to learn. Being able to portray learning experiences will enable NCEA to understand more of the implications of its findings about student achievement. Teachers of mathematics in grades 8 to 10 in 3 school districts will complete these instruments.

[FR Doc. 95–20689 Filed 8–21–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–192–002, et al.]

National Power Management Company, et al.; Electric Rate and Corporate Regulation Filings

August 14, 1995.

Take notice that the following filings have been made with the Commission:

1. National Power Management Company

[Docket No. ER95–192–002]

Take notice that on July 28, 1995, National Power Management Company (National Power) filed certain information as required by the Commission's January 4, 1995, order in Docket No. ER95–192–000. Copies of National Power's informational filing are on file with the Commission and are available for public inspection.

2. Wisconsin Public Power Inc. SYSTEM and Menasha Electric and Water Utility v. Wisconsin Electric Power Company

[Docket No. EL95–68–000]

Take notice that on August 2, 1995, The Wisconsin Public Power Inc. SYSTEM (WPPI) and the Menasha Electric Water Utility jointly filed a complaint under Section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e, alleging that the rates and certain terms and conditions in the Conjunctive Transmission Service Agreement (CTSA) between WPPI and Wisconsin Electric Power Company (WEPCO) are unjust, unreasonable, unduly discriminatory and contrary to the public interest. The CTSA is Rate Schedule FERC No. 66. The Complainants request that the Commission institute an investigation and hearing and determine that the challenged provisions are unjust, unreasonable and unduly discriminatory; fix just and reasonable rates; and establish a refund effective date not later than sixty days after the filing of WPPI's complaint.

The complaint alleges that the rates for WPPI's conjunctive transmission service under the CTSA are double the rates for network transmission service that WPPI provides to itself and to non-WPPI transmission customers. The

complainants assert that the CTSA's rates, its moratorium against any changes therein until November 1, 1996, and its regulatory-out clause and related provisions, violate the Commission's comparability principles governing transmission access and were imposed by WEPCO's exercise of monopoly power over transmission to WPPI member-customers in WEPCO territory.

Comment date: September 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Power Company

[Docket No. ER95–760–000]

Take notice that on August 8, 1995, Duke Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. ER95–1400–000]

Take notice that on July 20, 1995, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule Nos. 247.17 and 247.18.

Comment date: August 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Electric Company

[Docket No. ER95–1453–000]

Take notice that on July 31, 1995, Commonwealth Electric Company (Commonwealth) tendered for filing a Network Integration Service Transmission Tariff. Commonwealth proposes that the tariff become effective on September 29, 1995.

Comment date: August 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of Oklahoma Southwestern Electric Power Company

[Docket No. ER95–1464–000]

Take notice that on August 1, 1995, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively the Companies), tendered for filing a revised Exhibit A to the coordination transmission service agreement between companies and NorAm Energy Services, Inc. (NorAm).

The Companies request that the filing be accepted to become effective as of July 13, 1995, and have therefore requested waiver of the Commission's notice requirements.

A copy of the filing has been sent to NorAm, the Louisiana Public Service Commission and the Oklahoma Corporation Commission.

Comment date: August 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Central Illinois Light Company

[Docket No. ER95–1469–000]

Take notice that on July 31, 1995, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, and Central Illinois Public Service Company, tendered for filing with the Commission a revised Index of Customers and a signed Service Agreement under the Coordination Sales Tariff approved on April 25, 1995.

CILCO is requesting a waiver of the notice period to the extent necessary to allow the Service Agreement to be effective on June 5, 1995.

Copies of the filing were served on the customer and the Illinois Commerce Commission.

Comment date: August 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER95–1472–000]

Take notice that on August 2, 1995, New England Power Company (NEP), tendered for filing proposed supplements to five Municipal Power Contracts:

(1) Unit Power Contract dated January 13, 1994, with the Town of Holden Municipal Light Department;

(2) Unit Power Contract dated January 26, 1994, with the North Attleborough Electric Department;

(3) Unit Power Contract dated January 11, 1994, with the Hingham Municipal Light Plant;

(4) Unit Power Contract dated January 13, 1994, with the Groton Electric Light Department; and

(5) Unit Power Contract dated January 14, 1994, with the Middleton Municipal Light Department.

NEP states that the purpose of this filing is to establish the rate of return on common equity that may be charged under the contracts. NEP requests that its proposed rate of return become effective on the later of October 1, 1995 or the first day of the calendar month following the date of commencement of operations at the repowered Manchester Street facility.

NEP states that copies of its filing have been provided to the five municipal purchasers and to state regulatory authorities in Massachusetts and Rhode Island.

Comment date: August 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Maine Public Service Company

[Docket No. ER95–1473–000]

Take notice that on August 2, 1995, Maine Public Service Company submitted an agreement under its Umbrella Power Sales tariff.

Comment date: August 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER95–1475–000]

Take notice that on August 3, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, the Centralia Standby Service Agreement dated June 27, 1995 (Agreement), among PacifiCorp, The Washington Water Power Company (WWP), Portland General Electric Company (PGE), Puget Sound Power & Light Company (Puget), City of Seattle, City of Tacoma, Public Utility District No. 1 of Snohomish County, Public Utility District No. 1 of Grays Harbor County and the Bonneville Power Administration (Bonneville).

PacifiCorp is filing the Agreement on behalf of itself and the other jurisdictional utilities become of the return of standby energy Provisions contained therein. Included in PacifiCorp's filing is a Certificate of Concurrence dated August 2, 1995 on behalf of PGE. WWP and Puget will be submitting Certificate of Concurrence in support of PacifiCorp's filing. An October 1, 1995 effective date is requested.

Copies of this filing were supplied to WWP, PGE, Puget, Bonneville, the Washington Utilities and Transportation Commission and the Public Utililty Commission of Oregon.

Copies may be obtained from PacifiCorp's Regulatory Administration Department Bulletin Board System through a person computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: August 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of Colorado

[Docket No. ER95–1463–000]

Take notice that on August 1, 1995, Public Service Company of Colorado (Public Service), tendered for filing a proposed amendment to its Contract for Interconnections and Transmission Service (Contract) with Tri-State Generation and Transmission Association, Inc. (Tri-State), as contained in Public Service's Rate Schedule FERC No. 24. Under the

proposed amendment, Public Service is seeking to revise the points of delivery associated with the transmission service Tri-State provides pursuant to Article 8 of the Contract. This proposed amendment will have no impact on the rates or revenues collected for service under this rate schedule.

Public Service requests an effective date of August 1, 1995, for the proposed amendment.

Copies of the filing were served upon Tri-State and the state jurisdictional regulator (The Public Utilities Commission of the State of Colorado).

Comment date: August 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

Stamdard Paragraph:

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. 95–20715 Filed 8–21–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–505–000]

Southern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed North Main Line System Expansion Project and Request for Comments on Environmental Issues

August 16, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the North Main Line System Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Southern Natural Gas Company (Southern) proposes to construct, install, modify, and operate compressor stations, meter stations, and related appurtenant facilities. Specifically, Southern requests Commission authorization to:

- Construct a new 5,680-horsepower (hp) East Tuscaloosa Compressor Station at milepost 286.24 of the North Main Line at the border of Tuscaloosa and Jefferson Counties, Alabama;
- Add a 1,452-hp turbine compressor to the existing Pell City Compressor Station at milepost 352.478 of the North Main Line in St. Clair County, Alabama;
- Uprate an existing turbine compressor from 1,080 hp to 1,200 hp at the existing DeArmanville Compressor Station at milepost 380.629 of the North Main Line in Calhoun County, Alabama;
- Add compressor unloaders to two engine units at the existing Tarrant Compressor Station at milepost 321.947 of the North Main in Jefferson County, Alabama;
- Increase operating pressure at the (1) Dora Meter Station at milepost 11.281 of the Cordova Branch Line in Walker County, Alabama, and (2) Gadsden Branch Line in St. Clair County, Alabama; and
- Install overpressure protection at the existing:

1. Ashville Meter Station at milepost 16.2 of the Gadsden Branch Line in St. Clair County, Alabama;
2. Boaz No. 2 Meter Station at milepost 25.12 of the Gadsden Branch Line in Etowah County, Alabama;
3. Gadsden No. 5 Meter Station at milepost 25.12 of the Gadsden Branch Line in Etowah County, Alabama;
4. Marshall No. 1 Meter Station at milepost 27.42 of the Gadsden Branch Line in Etowah Country, Alabama;
5. Gadsden No. 4 Meter Station at milepost 31.292 of the Gadsden Branch Line in Etowah County, Alabama; and
6. Gadsden No. 1 Meter Station at milepost 33.309 of the Gadsden Branch Line in Etowah County, Alabama.
7. Ragland Branch Line Tie-in at milepost 9.233 and Siberton Tap Line Tie-in at milepost 27.318 of the Gadsden Branch Line in St. Clair and Etowah Counties, Alabama.

The general location of the project facilities and specific locations for facilities are shown in appendix 1.[2]

Land Requirements

Southern indicates that 65 to 70 acres of additional and would be required for the new compressor station. All other construction activities would occur within the existing rights-of-way and existing compressor stations and would not require additional land.

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 proposed abandonment under these general headings:

- Soils.
- Cultural resources.
- Water resources and wetlands.
- Public safety.
- Air and noise quality.
- Endangered and threatened species.
- Vegetation.

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

[1] Southern Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[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.

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 Issue

We have already identified one issue that we think deserves attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern:

The proposed compressor station and additional compression proposed at the existing compressor stations may increase ambient noise levels.

Keep in mind that this is a preliminary issue. Issues may be added, subtracted, or changed based on your comments and our analysis.

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 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 Capital St., NE., Washington, DC 20426;
- Reference Docket No. CP95–505–000;
- Send a *copy* of your letter to: Mr. Herman K. Der, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before September 15, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Herman K. Der at the above address.

Becoming an 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 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 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 Mr. Herman K. Der, EA Project Manager, at (202) 208–0896.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20710 Filed 8–21–95; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Filed With the Commission

August 16, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project Nos.:* 4678–019 and 4679–022.

c. *Date Filed:* July 12, 1995.

d. *Applicant:* Power Authority of the State of New York.

e. *Name of Projects:* Crescent & Vischer Ferry.

f. *Location:* On the Mohawk River in Albany, Saratoga, and Schenectady Counties, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Charles Lipsky, Vice President and Chief Engineer, Power Generation, Power Authority of the State of New York, 123 Main Street, White Plains, NY 10601, (914) 681–6200.

i. *FERC Contact:* Timothy Welch, (202) 219–2666.

j. *Comment Date:* September 11, 1995.

k. *Description of Amendment:* The Power Authority of the State of New York (licensee) seeks to modify article 41 for the Crescent (Project No. 4678) and Vischer Ferry (Project No. 4679) project licenses. Article 41 of the respective licenses require that the licensee operate the project so that at inflows between the required minimum flows and 3,250 cubic feet per second (cfs), when flashboards are installed at each project during the navigation season (generally mid-May to mid-November), the licensee is allowed to pond water within the limits of the flashboards (12 inches at Crescent and 13.5 inches at Vischer Ferry). Article 41 requires the licensee to operate in a run-of-river mode at inflows greater than 3,250 cfs. The licensee seeks to amend article 41 to allow it, from May 15 through July 31 and September 1 through November 10, to pond flows at inflows greater than 3,250 cfs so that it can store water (rather than spilling) until enough water is available to operate its Francis turbines only at maximum hydraulic capacity. The licensee is required to operate the turbines in only at maximum hydraulic capacity to provide safe fish passage for adult and juvenile blueback herring. The licensee would continue to limit the total drawdown of the project reservoirs to 12 inches at Crescent and 13.5 inches at Vischer Ferry.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does

not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20716 Filed 8–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR95–10–000]

Enogex Inc.; Notice Granting Late Interventions

August 16, 1995.

Motions to intervene in the above-captioned proceeding were due on May 19, 1995. Oklahoma Independent Petroleum Association; Premier Gas Company, A Division of Continental Drilling Company, Inc.; Twister Transmission Company; and Universal Resources Corporation each filed late motions to intervene. No party filed an answer in opposition to the respective late motions to intervene.

Each of the petitioners appears to have a legitimate interest under the law that is not adequately represented by other parties. Granting the late interventions will not cause a delay or prejudice any other party. It is in the public interest to allow each of the petitioners to appear in this proceeding. Accordingly, good cause exists for granting each of the late interventions.

Pursuant to section 375.302 of the Commission's regulations (18 CFR 375.202), the petitioner is permitted to intervene in this proceeding subject to the Commission's Rules and Regulations under the Natural Gas Act, 15 U.S.C. §§ 717–717(W). Participation of the late intervenors shall be limited to matters set forth in their respective motions to intervene. The admission of each of the late intervenors shall not be construed as recognition by the Commission that the intervenor might be aggrieved by any order entered in this proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20717 Filed 8–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–88–002, RP95–112–009, and RP95–396–000]

Tennessee Gas Pipeline Company; Notice of Motion Filing and Shortened Response Time

August 16, 1995.

Take notice that on August 14, 1995, Indicated Shippers, pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.212, submitted an emergency motion for postponement of implementation of the production area daily variance charge contained in the FERC Gas Tariff of Tennessee Gas Pipeline Company (Tennessee) pending Commission action on, Tennessee's implementation of the July 25, 1995 stipulation and agreement filed in the captioned proceeding. Indicated Shippers requested a shortened answer period.

Indicated Shippers states that copies of the motion have been served to all parties.

Any person desiring to file answers to the motion should file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rule 213 of the Commission's Rules of Practice and Procedure. All answers should be filed on or before August 24, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20718 Filed 8–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–136–000]

Williams Natural Gas Company; Notice of Rescheduled Informal Settlement Conference

August 16, 1995.

Take notice that the informal conference previously scheduled in this proceeding for Thursday, August 31, 1995, at 10:00 a.m., for the purpose of exploring the possible settlement of the above-referenced docket, is rescheduled for September 7, 1995, at 10:00 a.m. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2161 or Donald A. Heydt at (202) 208–0740.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20719 Filed 8–21–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5283–3]

Science Advisory Board; Notification of Public Advisory Committee; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the *Ecological Processes and Effects Committee* of the Science Advisory Board will meet on September 7–8, 1995, at the Environmental Protection Agency's Washington Information Center, Conference Room 17, 401 M Street, SW., Washington, DC 20460. The meeting agenda includes: (1) discussion with Deputy Administrator Fred Hansen on the Agency's move toward Community-Based Environmental Protection and the role of science in that approach; (2) review of portions of the Agency's draft document, ''Proposed Environmental Goals for America with Benchmarks for the Year 2005''; and (3) planning for Fiscal Year 1996. The committee will meet beginning at 8:30 a.m. each day, and ending no later than 5:00 p.m. The meeting will be open to the public, but seating will be on a first-come basis.

Background: The Environmental Goals Project is an EPA effort to define national environmental goals and benchmarks by which to measure progress toward achieving those goals. In 1994, a series of nine public roundtables were held in cities around the country to receive input on the nation's goals for the environment. The draft document, ''Proposed Environmental Goals for America with Benchmarks for the Year 2005,'' summarizes the Agency's proposals for long-range goals and measurable 10-year benchmarks. Following review by other federal agencies and the SAB, the document will be distributed for public review, including a series of public roundtables in early 1996. Concurrent with final federal agency review of the document, the SAB has been asked to review the goals and benchmarks and evaluate the following: (a) are the long-range goals technically meaningful and achievable? (b) will the goals, if met, result in a healthy and economically secure populace and a healthy environment? (c) are the milestones appropriate for gauging progress toward the goals? (d) do the milestones, taken together, adequately cover the range of technical considerations for each goal? and, (e) what other milestones should be considered, and is data currently available to allow their use?

In accepting the charge, the SAB agreed to establish a special subcommittee of the Executive Committee, with representatives of the relevant standing committees of the SAB, to review the draft document. EPEC's review of the draft document on September 7–8 will serve as input to the Executive Committee's Environmental Goals Subcommittee.

Additional Information: To obtain a meeting agenda, contact Ms. Constance Valentine, Science Advisory Board, 401 M Street, SW (1400F), Washington, DC 20460, telephone (202) 260–6552, FAX (202) 260–7118, or via the Internet at valentine.connie@epamail.epa.gov. To obtain a copy of the draft document, ''Proposed Environmental Goals for America with Benchmarks for the Year 2005,'' please contact Judith Koontz, Office of Administration and Resources Management, US EPA, 401 M Street, SW., Mail Code 3102, Washington, DC 20460, telephone (202) 260–8608.

Anyone wishing to make an oral presentation to the Committee regarding any of the topics on the agenda must notify Stephanie Sanzone, Designated Federal Officer for EPEC, no later than September 1, 1995, at telephone (202) 260–6557, FAX (202) 260–7118, or via the INTERNET at sanzone.stephanie@epamail.epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. Oral presentations will be limited to five minutes. Written comments (at least 30 copies) may be submitted to Ms. Sanzone up until the time of the meeting.

Dated: August 11, 1995.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 95–20766 Filed 8–21–95; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–00174; FRL–4974–7]

Toxics Release Inventory Phase 3; Chemical Use; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a 2–day public meeting to receive public comments on whether to expand the reporting requirements of the Toxics Release Inventory (TRI) to include chemical use data.

DATES: The meeting will take place on September 19 and 20, 1995, at 9 a.m. at Waterside Towers, Conference Room, 907 6th St. SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: The Toxic Substances Control Act Hotline, Environmental Assistance Division, Office of Pollution Prevention and Toxics, 7408, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, Telephone: (202) 554–1404, e:mail: TSCA-Hotline@epamail.epa.gov. Attention: Administrative Record No. AR 128.

SUPPLEMENTARY INFORMATION: On August 8, 1995, the President issued Executive Order 12969 (EO) which requires that companies providing supplies and services to the Federal Government shall be in compliance with the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and the Pollution Prevention Act of 1990 (PPA). According to the EO, these acts ''established programs to protect public health and the environment by providing the public with important information on the toxic chemicals being released into the air, land and water in their communities by manufacturing facilities.'' In a memorandum to the Administrator of the U.S. Environmental Protection Agency and the Heads of Executive Departments and Agencies dated August 8, 1995, the President directed the Administrator to develop and implement ''an expedited, open and transparent process for consideration of reporting under EPCRA on information on the use of toxic chemicals at facilities, including information on mass balance, materials accounting, or other chemical use data, pursuant to section 313(b)(1)(A)of EPCRA. . . . EPA shall report on the progress of this effort by October 1, 1995, with a goal of obtaining sufficient information to be able to make informed judgements concerning implementation of any appropriate program.''

EPA began a review process last year and on September 2, 1994, the Agency made available to the public an issues paper entitled ''Expansion of the Toxics Release Inventory (TRI) to gather chemical use information: TRI-Phase 3: Use Expansion.'' The paper was used to provide an overview of the issues which include input data such as the quantity of chemicals brought onsite, and out-put data such as the quantity consumed and the quantity sent off-site in products. EPA also sought to explore the issue of adding occupational demographics data elements to the TRI; the number of workers potentially exposed to a chemical, and whether or not occupational exposure monitoring has been performed. The issues paper served as the basis for discussion at a public meeting held on September 28, 1994.

EPA has reviewed comments from the meeting, evaluated a variety of the issues mentioned and has produced an updated issues paper. The purpose of the second paper is to report back to stakeholders, to draw preliminary conclusions on some issues, to focus attention to important unresolved questions, and to provide a focus for discussion at the September 19-20, 1995 public meeting. Copies of this paper will be available Tuesday, September 5, 1995, from the address and telephone number listed under **FOR FURTHER INFORMATION CONTACT.** Oral statements will be scheduled on a first-come, first-served basis by calling the telephone number listed under **FOR FURTHER INFORMATION CONTACT.** EPA encourages meeting participants to provide written statements and to submit the statements in advance of the meeting. In order to schedule speakers and accommodate attendees, please contact EPA under **FOR FURTHER INFORMATION CONTACT** by September 12, 1995.

List of Subjects

Environmental protection, Community right-to-know.

Dated: August 16, 1995.

Susan B. Hazen,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–20763 Filed 8–21–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5282–7]

Public Meetings of the Storm Water Phase II Advisory Subcommittee and the Urban Wet Weather Flows Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) is convening two separate public meetings: (1) The Storm Water Phase II Advisory Subcommittee meeting on September 11 and 12, 1995, and (2) the Urban Wet Weather Flows Advisory Committee (UWWF) meeting on September 20 and 21, 1995. These meetings are open to the public without need for advance registration. The Phase II Subcommittee is a subcommittee to the UWWF Advisory Committee. Phase II of the storm water program generally addresses storm water discharges from commercial, retail, light industrial, and institutional facilities, construction activities under five acres, and from

municipal separate storm sewer systems of less than 100,000. The Phase II Advisory Subcommittee will discuss (1) substantive issues related to developing a comprehensive Phase II program; (2) procedural issues related to future Subcommittee meetings; (3) goals, objectives, and desired outcomes of the Subcommittee; and (4) information needs for future discussions. The Subcommittee will also discuss coordination with the UWWF Advisory Committee. The UWWF Advisory Committee will continue discussion of substantive issues including: (1) water quality based requirements, control technologies, financial capability, monitoring, and environmental measures of success; (2) reports from the work groups on Storm Water Phase I, Water Quality Criteria and Watershed Approach; (3) goals, objectives, and desired outcomes of the Committee; and (4) information needs for future discussions. The Committee's agenda will also include a status report on the SSO Subcommittee and the Storm Water Phase II Subcommittee.

DATES: The Phase II meeting will be held on September 11 and 12, 1995. The September 11th meeting will begin promptly at 10:00 a.m. EST and end at approximately 5:45 p.m. On September 12th, the meeting will begin at 8:30 a.m. and end at approximately 5:00 p.m.. The UWWF Advisory Committee meeting will be held on September 20 and 21, 1995. On the 20th, the meeting will begin at approximately 8:30 a.m. EST and run until about 5:00 p.m. On the 21st, the meeting will run from about 8:30 a.m. until completion.

ADDRESSES: The Phase II meeting will be held at the Sheraton Crystal City Hotel Arlington, 1800 Jefferson Davis Highway, Arlington, Virginia 22202. The hotel telephone number is (703) 486–1111. The UWWF Advisory Committee meeting will be held at the Rosslyn Holiday Inn/West Park Hotel, 1900 N. Fort Myer Drive Arlington, Virginia 22209. The hotel telephone number is (703) 887–2000.

FOR FURTHER INFORMATION CONTACT: Pamela Mazakas, Storm Water Phase II Matrix Manager, Office of Wastewater Management, at (202) 260–6599. For the UWWF Advisory Committee meeting, contact William Hall, Matrix Manager, Office of Wastewater Management, at (202) 260–1458, or Internet: hall.william@epamail.epa.gov.

Dated: August 16, 1995.

Michael B. Cook,

Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 95–20762 Filed 8–21–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

First Public Safety Wireless Advisory Committee

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of Advisory Committee Establishment. NTIA and FCC Announce First Public Safety Wireless Advisory Committee Meeting.

SUMMARY: The NTIA and the FCC have established a Public Safety Wireless Advisory Committee to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. The establishment of the committee is in the public interest. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice also advises interested persons of the initial meeting of the Public Safety Wireless Advisory Committee.

DATES: September 11, 1995; 10:00 a.m. to 5:00 p.m.

ADDRESSES: Postal Square Museum Building; 2 Massachusetts Avenue, N.E., Washington, D.C. 20002.

SUPPLEMENTARY INFORMATION: The agenda for the first meeting is as follows:

1. Introduction and Welcoming Remarks
2. Approval of Agenda
3. Committee Charter and other Administrative Matters
4. Steering Committee/Subcommittees
5. Work Program/Organization of Work
6. Meeting Schedule
7. Agenda for Next Meeting
8. Other Business
9. Closing Remarks

The Subcommittees of the Public Safety Wireless Advisory Committee will have an open membership. All interested parties are invited to attend and to participate in the Advisory Committee processes and its Subcommittees' meetings. This policy will ensure balanced participation. To attend the first meeting of the Public Safety Wireless Advisory Committee and its Steering Committee, please RSVP to Deborah Richardson-Behlin of the Wireless Telecommunications Bureau of the FCC on or before August 31, 1995, by calling (202) 418–0650, faxing (202) 418–2643, or replying by E-mail at dbehlin@fcc.gov. Please provide your name, the organization you represent, your phone number and fax number when you RSVP. This RSVP is for the purpose of determining the number of people who will attend this first meeting, and distributing passes to attendees.

FOR FURTHER INFORMATION CONTACT: William Donald Speights, NTIA (202–482–1652), or John J. Borkowski, FCC (202–418–0680), Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee. You may also obtain more information from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov.).

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 95–20790 Filed 8–21–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011330–006

Title: Information System Agreement

Parties:

P&O Containers, Ltd.
American President Lines, Ltd.
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
Crowley Maritime Corporation
Hapag-Lloyd Aktiengesellschaft

Orient Overseas Container Line, Inc.
Lykes Bros. Steamship Co., Inc.
Nedlloyd (USA) Corp.
Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed amendment clarifies Article 7—Membership, Withdrawal, Readmission, and Expulsion regarding Agreement membership fees and dues. It also modifies the structure of the Executive Committee as set forth under Article 8—Voting.

Agreement No.: 203–011510
Title: West African Discussion Agreement
Parties:
Members of the American West African Freight Conference
Atlantic Bulk Carriers Limited
Delmas AAEL, Inc.
Farrell Lines, Inc.
Maersk Line
Torm West Africa Line
Wilhelmsen Lines A/S
Interglobal Shipping Company, Ltd.
Universal Africa Line

Synopsis: The proposed Agreement authorizes the parties to discuss tariffs, rates, service items, rules and regulations, charges, conditions an practices, and service contracts in the trade between U.S. Atlantic and Gulf Coast ports and inland U.S. points via such ports on the one hand, and West African ports in the range between the Southern border of Western Sahara and the Northern border of Namibia, and coastal and interior points in Africa served via such ports, and ports and points in the Cape Verdes Islands in the Atlantic Ocean and Fernando Po San Thome and Principe in the Gulf of Guinea, on the other hand. Adherence to any agreement reached is voluntary.

By Order of the Federal Maritime Commission.

Dated: August 17, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–20729 Filed 8–21–95; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 95–12]

International Freight Forwarders & Customs Brokers Association of New Orleans, Inc. et al. v. Latin American Shippers Service Association, et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by International Freight Forwarders & Customs Brokers Association of New Orleans, Inc., Houston Customhouse Brokers and Freight Forwarders Association, Association of Forwarding Agents and Foreign Freight Brokers of Mobile, Incorporated, and Board of Commissioners of the Port of New Orleans (collectively designated ''Complainants'') against Latin American Shippers Service Association, Crowley American Transport, Inc., King Ocean Central America, S.A., A.P. Moller-Maersk Line, Seaboard Marine, Ltd., Sea-Land Service, Inc., and Tropical Shipping and Construction Co., Inc. (collectively designated ''Respondents'') was served August 16, 1995. Complainants allege that Respondents have violated sections 10(a)(3), 10(b)(6), (b)(10), (b)(11), (b)(12) and 10(c)(5) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a), 1709(b)(6), 1709(b)(10), 1709(b)(11), 1709(b)(12), and 1709(c)(5), in connection with their rate activity and practices in the trades between ports in the U.S. South Atlantic and Central and South America and between ports in the U.S. Gulf of Mexico and Central and South America, which are covered by Agreement No. 202–010987–022.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by August 16, 1996, and the final decision of the Commission shall be issued by December 16, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 95–20691 Filed 8–21–95; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–97]

Quarterly Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice is a quarterly announcement which contains the following: A list of sites for which ATSDR has completed a public health assessment or issued an addendum to a previously completed public health assessment during the period January-March 1995. For this period, assessments were completed only for sites that are on or proposed for inclusion on, the National Priorities List (NPL).

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments and public health assessments with addenda was published in the **Federal Register** on April 21, l995, [60 FR 19940]. The quarterly announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health

assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487–4650. A charge is applied by NTIS for these public health assessments. The NTIS order numbers are listed in parentheses after the site name.

Public Health Assessments or Addenda Completed or Issued

Between January 1, 1995 and March 31, 1995, public health assessments or addenda to public health assessments were issued for the NPL sites listed below:

Alabama

T. H. Agriculture and Nutrition (Montgomery)—Montgomery—(PB95–188967)

Colorado

Smeltertown/Koppers—Salida—(PB–95–195160)

Connecticut

Old Southington Landfill—Southington—(PB95–195103)

Florida

Agrico Chemical Site—Pensacola—(PB95–181764)

Hawaii

Del Monte Corporation (Oahu Plantation)—Kunia (PB95–181814)

Idaho

Blackbird Mine—Cobalt—(PB95–171146)

Illinois

Wauconda Sand and Gravel Landfill—Wauconda—(PB95–187084)

Indiana

Marion Bragg Dump—Marion—(PB95–179867)
Reilly Tar & Chemical Corporation (Indianapolis Plant)—Indianapolis—(PB95–186854)

Louisiana

American Creosote Works, Incorporated (Winnfield Plant) Winnfield—(PB95–195186)

Massachusetts

Hocomonco Pond—West Borough—(PB95–171518)
Iron Horse Park—Billerica—(PB95–171542)

Michigan

South Macomb Disposal Authority #9, 9A—Macomb Township—(PB95–188876)

Mississippi

Chemfax—Gulfport—(PB95–195830)
Potter Company—Wesson—(PB95–171526)

Missouri

Weldon Springs Ordnance Works (Former)—St. Charles—(PB95–195178)

New Jersey

Bridgeport Rental and Oil Services—Logan Township—(PB95–199402)

Horseshoe Road Dump—Sayreville—(PB95–181939)

Pomona Oaks Well Contamination—Galloway Township (PB95–172854)

Upper Deerfield Township Sanitary Landfill—Upper Deerfield Township—(PB95–187787)

New Mexico

AT & SF (Albuquerque)—Albuquerque—(PB95–179917)

New York

Johnstown City Landfill—Johnstown—(PB95–199360)

Niagara County Refuse—Wheatfield—(PB95–171534)

Oklahoma

National Zinc Company—Bartlesville—(PB95–191649)

Oklahoma Refining Company—Cyril—(PB95–187712)

Oregon

Northwest Pipe and Casing Company—Clackamas (PB95–201505)

Puerto Rico

Frontera Creek—Rio Abajo—(PB95–179107)

South Carolina

Helena Chemical Company Landfill—Fairfax—(PB95–179479)

Washington

American Crossarm and Conduit Company—Chehalis (PB95–188942)

Wisconsin

Kohler Company Landfill—Kohler—(PB95–179008)

Dated: August 15, 1995.

David Satcher,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 95–20726 Filed 8–21–95; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

[CDC 576]

Project Grant to the National Tuberculosis Controllers Association

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 grant funds for a sole source grant to the National Tuberculosis Controllers Association (NTCA). Approximately $150,000 is available in FY 1995 to fund this grant. The award is expected to begin on or about September 30, 1995, for a 12-month budget period within a five year project period. The funding estimate is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The purpose of this grant is to assist NTCA in developing, establishing, and coordinating systems and procedures to enhance the role of State and local health department tuberculosis (TB) control officials (TB Controllers), TB Nurse Consultants and other key TB program staff, in directing efforts to control, prevent, and eventually eliminate TB in the United States.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of HIV Infection and Immunization and Infectious Diseases. (To order a copy of ''Healthy People 2000,'' see the section ''Where to Obtain Additional Information.'')

Authority

This grant is authorized under Section 317E of the Public Health Service Act (42 U.S.C. 247b–6), as amended. Applicable program regulations are found in part 51b, subparts A, of Title 42, Code of Federal Regulations.

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicant

Assistance will be provided only to NTCA for this project. No other applications are solicited.

Eligibility is limited to NTCA because of its existing unique relationship with the State and local TB Controllers, TB Nurse Consultants, and other key TB program staff. NTCA is the only national TB organization whose members are TB Controllers, TB Nurse Consultants, and other key TB program staff who represent all States and territories. NTCA was organized in January 1995 to advance the elimination of TB in the United States through collective, concerted actions of the officials of State, local, and territorial governments who are empowered by their jurisdictions with the responsibility for carrying out programs to control and prevent TB. NTCA's technical expertise is an asset in the complex and changing environment of front-line health care delivery.

Executive Order 12372 Review

This application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.947, TB Demonstration, Research, Public and Professional Education Projects.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to announcement 576 and contact Manuel Lambrinos, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–16, Atlanta, GA 30305, telephone (404) 842–6777.

A copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) referenced in the **SUMMARY** may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: August 15, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–20624 Filed 8–21–95; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Generic Drugs Advisory Committee

Date, time, and place. September 6 and 7, 1995, 8:30 a.m., Holiday Inn—Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, September 6, 1995, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5 p.m.; open committee discussion, September 7, 1995, 8:30 a.m. to 12 m.; closed committee deliberations, 12 m. to 5 p.m.; Kimberly L. Topper or Angie Whitacre, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Generic Drugs Advisory Committee, code 12539.

General function of the committee. The committee gives advice on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases and makes appropriate recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, the Commissioner of Food and Drugs, and the Director of the Center for Drug Evaluation and Research. The committee may also review agency-sponsored intramural and extramural biomedical research programs in support of FDA's generic drugs regulatory responsibilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 22, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On September 6 and 7, 1995, the committee will review and advise on the status of Center for Drug Evaluation and Research (CDER) quality and performance initiatives related to formulation dissolution and bioequivalence. The committee will also discuss its relationship to, and interaction with, CDER's new Office of Pharmaceutical Sciences.

Closed committee deliberations. On September 7, 1995, the committee will discuss trade secret and/or confidential commercial information relevant to pending abbreviated new drug applications (ANDA's). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Radiological Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. September 11, 1995, 9:30 a.m., Corporate Bldg., conference room 20B, 9200 Corporate Blvd., Rockville, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Marriott

Washingtonian Hotel, 9751 Washingtonian Blvd., Gaithersburg, MD. Attendees requiring overnight accommodations may contact the hotel at 301–590–0044 and reference the FDA panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Ed Rugenstein, Sociometrics, Inc., 301–608–2151. The availability of appropriate accommodations cannot be assured unless prior written notification is received.

Type of meeting and contact person. Open public hearing, 9:30 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 12 m.; closed committee deliberations, 12 m. to 1 p.m.; open committee discussion, 1 p.m. to 4 p.m.; John C. Monahan, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Radiological Devices Panel, code 12526.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 6, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a draft guidance document entitled ''Magnetic Resonance Imaging Guidance Update for Rate of Change of Gradient Fields.'' Single copies of the draft guidance are available from John C. Monahan (address above).

Closed committee deliberations. FDA staff will present to the committee trade secret and/or confidential commercial information regarding present and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Neurological Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. September 15, 1995, 8 a.m., Corporate Bldg., ground floor conference room, 9200 Corporate Blvd., Rockville, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Marriott Washingtonian Hotel, 9751 Washingtonian Blvd., Gaithersburg, MD. Attendees requiring overnight accommodations may contact the hotel at 301–590–0044 and reference the FDA Panel meeting block. Reservations may be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Ed Rugenstein, Sociometrics, Inc., 301–608–2151. The availability of appropriate accommodations cannot be assured unless prior notification is received.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 1:30 p.m.; closed committee deliberations, 1:30 p.m. to 4 p.m.; Jerilyn K. Glass, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Neurological Devices Panel, code 12513.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 4, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the following topics: (1) Clinical perspectives on the use of balloon catheters, coils, and liquid occlusive devices for the treatment of aneurysms, arterio-venous malformations, or bleeding in the cerebrovascular circulation; and (2) research considerations when designing studies to evaluate these devices.

Closed committee deliberations. FDA staff will present to the committee trade secret and/or confidential commercial information regarding present and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Immunology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. September 21 and 22, 1995, 8 a.m., Holiday Inn—Gaithersburg, Walker and Whetstone Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Ed Rugenstein, Sociometrics, Inc., 301–608–2151. The availability of appropriate accommodations cannot be assured unless prior written notification is received.

Type of meeting and contact person. Open public hearing, September 21, 1995, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 1:30 p.m.; open public hearing; 1:30 p.m. to 2:30 p.m., unless public participation does not last that long; open committee discussion, 2:30 p.m. to 6 p.m.; closed committee deliberations, September 22, 1995, 8 a.m. to 9 a.m.; open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Immunology Devices Panel, code 12516.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 1, 1995, and submit a brief statement of

the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues relating to the review of three premarket approval applications for: (1) An in situ hybridization assay to measure a prognostic marker in breast tumor tissues; (2) a serum tumor marker to aid in the detection of recurrence in Stage 2 and 3 breast cancer patients; and (3) an assay to measure a urinary marker to aid in the detection of recurrence in bladder cancer patients.

Closed committee deliberations. FDA staff will present to the committee trade secret and/or confidential commercial information regarding pending or future device submissions. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Joint Meetings of Nonprescription Drugs Advisory Committee with Endocrinologic and Metabolic Drugs Advisory Committee, Drug Abuse Advisory Committee, and Gastrointestinal Drugs Advisory Committee

Date, time, and place. September 27 and 28, 1995, 8:30 a.m., and September 29, 1995, 3 p.m., conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, September 27, 1995, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; closed committee deliberations, 5 p.m. to 6 p.m.; open public hearing, September 28, 1995, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4 p.m.; open public hearing, 4 p.m. to 4:30 p.m., unless public participation does not last that long; open committee discussion, 4:30 p.m. to 6:30 p.m.; open committee discussion, September 29, 1995, 3 p.m. to 4 p.m.; Lee L. Zwanziger, Stephen Pollitt, or Liz Ortuzar, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Nonprescription Drugs Advisory Committee, code 12541.

General functions of the committees. The Nonprescription Drugs Advisory Committee reviews and evaluates data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases. The Endocrinologic and Metabolic Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders. The Drug Abuse Advisory Committee advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs. The Gastrointestinal Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 19, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On September 27, 1995, the Nonprescription Drugs Advisory Committee and some members of the Endocrinologic and Metabolic Drugs Advisory Committee will discuss public health issues relevant to cholesterol lowering regimens and data relevant to new drug application (NDA) 16–640 for cholestyramine (Questran® powder) and NDA 19–669 for cholestyramine (Questran® Light with aspartame), sponsored by Bristol-Myers Squibb to switch the products from prescription to over-the-counter marketing status for use as adjunctive therapy to diet for the reduction of elevated serum cholesterol in patients with primary hypercholesterolemia (elevated low density lipoprotein (LDL) cholesterol) who do not respond adequately to diet. On September 28, 1995, the Nonprescription Drugs Advisory Committee and the Drug Abuse Advisory Committee will discuss data relevant to NDA 20–066 (Nicorette® 4 milligrams (mg) and NDA 18–612 (Nicorette® 2 mg) to switch nicotine polacrilex (Nicorette®, SmithKline Beecham Consumer Healthcare Products) from prescription to over-the-counter status for use as an aid to smoking cessation for the relief of nicotine withdrawal symptoms. Later on September 28, 1995 the Nonprescription Drugs Advisory Committee and some members of the Gastrointestinal Drugs Advisory Committee will discuss data relevant to NDA 20–555 for nizatidine tablets, 75 mg, sponsored by Whitehall-Robins Healthcare to switch the product from prescription to over-the-counter status for the prevention of meal and beverage induced heartburn. During the afternoon of September 29, 1995, the Nonprescription Drugs Advisory Committee will discuss issues raised during the Public Hearing before the Commissioner on Over-The-Counter Drug Labeling held earlier during the same day.

Closed committee deliberations. On September 27, 1995, the Nonprescription Drugs Advisory Committee will discuss trade secret and/or confidential commercial information relevant to pending new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain

limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: August 16, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–20730 Filed 8–21–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Health Standards and Quality Bureau; Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**s, Vol. 59, No. 60, pp. 14659–14662, dated Tuesday, March 29, 1994, and Vol. 59, No. 187, pp. 49406–49407, dated Wednesday, September 28, 1994) is amended to reflect changes in the organizational structure of the Health Standards and Quality Bureau (HSQB), Associate Administrator for Operations and Resource Management. The HSQB functional statement has not been changed; however, it is being republished to reflect the new administrative code.

The specific amendments to part F are as follows:

- Section F.10.D.7. (Organization) is amended to read as follows:

7. Health Standards and Quality Bureau (FLH)

a. Survey Training Improvement Team (FLH1)

b. Center for Information Systems (FLH2)

c. Center for Operations Management (FLH3)

d. Center for Laboratories (FLH4)

e. Center for Hospital and Community Care (FLH5)

f. Center for Long Term Care (FLH6)

g. Center for Health Education and Promotion (FLH7)

h. Center for Clinical Measurement and Improvement (FLH8)

- Section F.20.D.7. (Functions) is amended by deleting all functional statements in their entirety and replacing them with the following:

7. Health Standards and Quality Bureau (FLH)

- Provides leadership and overall programmatic direction for implementation and enforcement of health quality and safety standards for providers and suppliers of health care services and evaluates their impact on the utilization, quality and cost of health care services.
- Plans, develops, and establishes procedures and guidelines for administering and evaluating the nationwide Medicare and Medicaid survey and certification program.
- Monitors and validates the process for certifying that participating

providers and suppliers are in compliance with established conditions and standards.

- Responsible for implementation and operation of professional review and other medical review programs.
- Administers a comprehensive system for assessment of individual professional and medical review organizations to determine compliance with program requirements and to document the effectiveness and impact of their activities.
- Establishes specifications for information and data reporting, collection and systems requirements for the survey and certification, professional review and other medical review activities.

a. Survey Training Improvement Team (FLH1)

- Responsible for the national surveyor training system.
- Directs and coordinates development, measurement and improvement of an integrated surveyor training program for HCFA regional office and State agency personnel on interpretation of regulations, surveyor protocols, procedures, techniques and certification issues.
- In conjunction with the specific program groups, insures that training materials and techniques are current and comprehensive and meet the needs of the HCFA regional office and State survey agencies.
- Evaluates program-related data and develops approaches for improvements to program management and operations.
- Evaluates customer service and systems performance data and develops approaches for improvement to the training programs.
- Serves as the focal point for the operation of all training including scheduling, logistical support, enrollment, etc. Coordinates, as necessary, with State agencies, regional offices, and other HCFA organizations, provider and supplier groups and other stakeholder groups who may require the program training.
- Communicates with professional groups, providers, and consumers to obtain information for the development and implementation of training initiatives.
- Serves as focal point for administering the certification of Continuing Education Units under the auspices of the International Association for Continuing Education and Training.

b. Center for Information Systems (FLH2)

- Manages day-to-day operations of the Bureau's data systems, including the Peer Review Organization, End-Stage Renal Disease Network, Health Care Quality Improvement Program, On-line Survey and Certification and Reporting and Clinical Laboratory Improvement Amendment activities.
- In conjunction with other Centers, designs, operates, documents, and maintains system applications used in the administration of Bureau programs, and/or provides technical assistance in implementing and maintaining program-related ADP systems.
- Designs, develops, and produces management reports to support effective and efficient operation of Bureau program systems.
- Provides expert technical support to the Bureau's information technology infrastructure; i.e., local area network end-users, telecommunications, personal computers, etc.
- Develops and implements Bureau-wide information technology policies and procedures to support the Bureau's information technology objectives.
- Prepares specifications for programming the On-line Survey and Certification and Reporting system to include changes to interpretive guidelines, survey procedures and forms.
- Coordinates and monitors the transmission of data to and from proficiency testing organizations, accrediting programs, common working files and Medicaid State Agencies.
- Directs and monitors the Bureau's system security and LAN administration programs.
- Provides technical support in development and evaluation of ADP sections of contractor proposals; establishes procedures regarding systems operations and security.
- Maintains liaison with the Bureau of Data Management and Strategy, user groups, and workgroups within and outside of the Agency.
- Maintains liaison with internal and external customers and stakeholders to assess needs and satisfaction and to coordinate development of IRM strategies, budget, and implementation plans.
- Oversees systems support contracts.
- Participates in meetings with data standards organizations.
- Develops and/or evaluates program-related data, including approaches and recommendations for improvements to program management and operations.
- Evaluates customer service and system performance data and develops approaches for improvement.

c. Center for Operations Management (FLH3)

- Develops, coordinates, manages, and evaluates Bureau budget, procurement, contract, personnel management, correspondence, and administrative support systems.
- Develops and implements a Bureau staff development plan to ensure that the current and future training needs of all employees is addressed. Coordinates all internal and external training and staff development initiatives.
- Directs and manages the Bureau's management and administrative operations including the administrative budget and information collection budget. Coordinates Bureau responses to GAO and OIG reports.
- Manages the Bureau's correspondence, printing, manual issuance, and regulation management processes, including managing a bureau-wide automated library and other communication systems.
- Responds to program-related public and congressional inquiries and to freedom of information and privacy act requests related to bureau programs.
- Coordinates contract development, evaluation of contract proposals, and negotiation for Bureau contracts. Acts as project officer for contracts affecting multiple bureau components.
- In partnership with central and regional office staff, coordinates and oversees systems for assessing contractor performance.
- Administers the State grants process for Medicare and Medicaid State certification and CLIA program payments. Reviews periodic State agency expenditure reports and estimates to evaluate budget execution and determine allowability of costs.
- Prepares annual operating plans for States to assure sufficient resources are available for program operations on a quarterly basis.
- Develops justifications for program operating requirements for Medicare State certification, Medicaid State certification, Peer Review Organization, End-Stage Renal Disease Networks, CLIA, and support contracts.
- Establishes and maintains systems to control program funds and ensure that the Anti-Deficiency Act is not violated.
- Manages the Bureau procurement plan.
- Coordinates with HCFA central and regional office staff, state agencies, and the contractor community concerning contract and financial management and issues.
- Evaluates budget, contract, correspondence, and administrative

data, including approaches and recommendations for improvements to their management and operations.

- Evaluates customer service and performance data and develops approaches for improvement.

d. Center for Laboratories (FLH4)

- Directs and coordinates development, measurement and improvement of program strategies that implement, enforce, and monitor the Clinical Laboratory Improvement Program. Scope of the program administered includes all clinical laboratories, conducting testing of human specimens for the purpose of diagnosis and/or treatment for residents of the United States.
- Prepares regulation specifications and evaluates comments.
- Serves as the HCFA liaison with the Public Health Service, Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration, professional groups, standards setting organizations, and consumer and advocate groups, in the development and administration of laboratory standards.
- Prepares and implements interpretive guidelines, survey procedures, and forms.
- Develops, implements, and monitors quality indicators for the assessment of quality of laboratory services.
- Directs and coordinates development, implementation, and improvement of the CLIA User Fee Plan, including the administration of the collection process.
- Reviews and approves applications by States for ''exemption'' and private accrediting bodies for deemed status.
- Develops and administers proficiency testing programs and monitors their performance.
- In conjunction with CDC, develops and administers the cytology proficiency testing program.
- Develops and/or evaluates program-related data, including approaches and recommendations for improvements to program management and operations.
- Evaluates customer service and system performance data and develops approaches for improvement.
- Contributes to/participates in budget development, direction, execution, and review.
- Provides support to and communicates with other HCFA and HHS components, and other governmental agencies such as the Veterans' Administration and the Department of Defense on program-related issues.
- Represents HCFA in presentations and meetings with public and professional organizations and CLIAC on matters involving laboratory standards, enforcement and performance. Provides public education as needed.
- Assists in the development of functional requirements and specifications required for the design of information systems and evaluates the effectiveness of information systems.
- Through communication with the regional offices, assists in the review of State agency performance, in these program areas, by developing appropriate assessment techniques and protocols.
- Assumes primary responsibility for assessing training needs, developing instructional material, and training State Agency and regional office staff in these program areas.
- Develops assessment techniques and protocols for the evaluation and improvement of established policy by State survey agencies, exempt States and accrediting organizations whose standards are deemed to meet Federal requirements for clinical laboratories.
- Manages mission specific contracts.

e. Center for Hospital and Community Care (FLH5)

- Directs and coordinates development, measurement and improvement of program strategies that implement, enforce, and monitor health quality and safety standards and other health care procedures for other than CLIA and Long Term Care providers and suppliers under Medicare and Medicaid, e.g., Hospitals, Psychiatric Hospitals, Ambulatory Surgical Centers, End-Stage Renal Disease Facilities, Home Health Agencies, etc.
- Develops and implements provider and supplier specific quality indicators and outcome measures in order to improve care provided to beneficiaries. Directs program efforts to assure the improvement of health care delivery in all settings.
- Develops and implements program strategies to improve the quality of health care delivery through the education of the beneficiary, public, providers, suppliers and other concerned parties about the standards and methods for delivery of quality health care; e.g., education about standards or care, publication of monographs, etc.
- Manages mission specific contracts.
- Develops and/or evaluates program-related data, including approaches and recommendations for improvements to program management and operations.
- Evaluates customer service and system performance data and develops approaches for improvement.
- Contributes to/participates in budget development, direction, execution, and review.
- Communicates with professional groups, consumer and advocate groups, and standards setting organizations and serves as the HCFA focal point for implementation of compliance, enforcement, health quality and safety procedures relative to these providers and suppliers.
- Prepares regulation specifications and evaluates comments.
- In partnership with the Bureau of Policy Development, reviews and analyzes existing health and safety standards to determine their initial and continued effectiveness and impact on utilization, quality, and cost of provider and supplier services.
- Prepares and implements interpretive guidelines, survey procedures, forms, and related sections of the Regional Office, State Medicaid and State Operations Manuals.
- Through communication with the regional offices, assists in the review of State agency performance, in these program areas, by developing appropriate assessment techniques and protocols.
- Assumes primary responsibility for assessing training needs, developing instructional material, and training State Agency and regional office staff in these program areas.
- Develops assessment techniques and protocols for the evaluation and improvement of established policy by State survey agencies and accrediting organizations whose standards are deemed to meet Federal requirements for the Medicare Programs.
- Serves as HCFA liaison with other government organizations, professional groups, and standards setting organizations, consumer and advocate groups and beneficiaries.
- Serves as the focal point for responding to regional office, State agency, Congressional, organizational, and individual inquiries related to the application of health and safety requirements and certification procedures for participating providers.
- Assists in the development of functional requirements and specifications required for the design of information systems and evaluates the effectiveness of information systems.

f. Center for Long Term Care (FLH6)

- Directs and coordinates development, measurement and improvement of program strategies that implement, enforce and monitor health quality and safety standards and other health care procedures for long-term care facilities under Medicare and

Medicaid. These facilities include skilled nursing facilities/nursing facilities (including swing beds) and intermediate care facilities for the mentally retarded.

- Develops and implements provider specific quality indicators and outcome measures in order to improve care provided to beneficiaries. Directs program efforts to assure the improvement of health care delivery in all settings.
- Coordinates the development of the Resident Assessment Instrument that includes the Minimum Data Set (MDS).
- Develops and implements program strategies to improve the quality of health care delivery through the education of the beneficiary, public, providers, suppliers and other concerned parties about the standards and methods for delivery of quality health care.
- Develops and/or evaluates program-related data, including approaches and recommendations for improvements to program management and operations.
- Evaluates customer service and system performance data and develops approaches for improvement.
- Contributes to/participates in budget development, direction, execution, and review.
- Communicates with professional groups, consumer and advocate groups, and standards setting organizations and serves as the HCFA focal point for implementation of compliance, enforcement, health quality and safety procedures relative to these facilities.
- Prepares regulation specifications and evaluates comments.
- In partnership with the Bureau of Policy Development, reviews and analyzes existing standards to determine their initial and continued effectiveness and impact on utilization, quality, and cost of provider and supplier services.
- Manages mission specific contracts.
- Leads/oversees surveyor minimum qualifications testing program.
- In partnership with the Medicaid Bureau reviews and analyses existing standards for ICFs/MR to determine their continue effectiveness and prepares regulation specifications addressing changes to those requirements.
- Leads in the development and implementation of clinical data information for improving the coordination of care between health care settings.
- Prepares and implements interpretive guidelines, survey procedures, forms, and related sections of the Regional Office, State Medicaid and State Operations Manual.
- Through communication with the regional offices and the Medicaid Bureau, assists in the review of State agency performance, in these program areas, by developing appropriate assessment techniques and protocols.
- Assumes primary responsibility for assessing training needs, developing instructional material, and training State Agency and regional office staff in these program areas.
- Develops assessment techniques and protocols for the evaluation and improvement of State survey agencies and accrediting organizations whose standards are deemed to meet Federal requirements for the Medicare Programs.
- Serves as HCFA liaison with other government organizations, professional groups, and standards setting organizations, consumer and advocate groups and beneficiaries.
- Serves as the focal point for responding to regional office, State agency, Congressional, organizational, and individual inquiries related to the application of health and safety requirements and certification procedures for participating providers.
- Develops and coordinates procedures and guidelines for implementing and evaluating inspection of care under Medicaid.
- Through communications with the regional offices, develops appropriate assessment techniques and protocols to determine the effectiveness of Medicaid State agency performance in the area of utilization control.
- Provides the documentation and analyses necessary to initiate and support actions on disallowances, sanctions, and corrective action requirements, and on adjudication of appeals of disallowances and sanctions resulting from national quality control programs that determines the effectiveness of Medicaid State agency performance in the area of utilization control.
- Assists in the development of functional requirements and specifications required for the design of information systems and evaluates the effectiveness of information systems.

g. Center for Health Education and Promotion (FLH7)

- Undertakes communications and quality improvement activities to support the Medicare Peer Review and End-Stage Renal Disease programs, and HCFA's Consumer Information Strategy.
- Coordinates development and measurement of Health Care Quality Improvement Program (HCQIP) communication strategies and implementation approaches to promote behavior changes which result in improved health care quality.
- Serves as the HCQIP communications focal point with internal and external customers and stakeholders including beneficiary and provider groups, regional offices, Peer Review Organizations, ESRD Networks, and other contractors and State entities.
- Coordinates development of quality improvement communications and information dissemination guidelines and mechanisms and implementing instructions for HCQIP contractors.
- Plans, develops; and issues operating policy, specifications, procedural requirements, and other materials to implement, maintain, and oversee the HCQIP communication process.
- Manages mission specific contracts.
- Coordinates HCFA Consumer Information Strategy.
- Develops, implements and interprets data driven performance measurement and quality improvement efforts to assess/improve quality of care provided to Medicare beneficiaries. Areas of concentration include prevention, consumer choice, and beneficiary education about health care options and healthy behavior.
- Coordinates and promotes participation of public and private sector individuals, and groups within HCFA in the development of performance measures and quality improvement strategies of mutual benefit and interest.
- Coordinates the preparation of manuals and other policy issuances required to meet the PRO and ESRD-related instructional and informational needs of providers, contractors, State agencies, regional offices, Peer Review Organizations, ESRD Network organizations, managed care organizations, Social Security Administration and other audiences directly involved in the administration of HCFA quality improvement/ management programs.
- In partnership with central and regional office staff, coordinates and oversees systems for assessing contractor performance.
- Maintains an ongoing review system, including clearance of instructions, to ensure clarity and consistency. Identifies instructional needs and initiates development of instructions by HCFA components.
- Maintains liaison with the regional offices, and other internal and external HCQIP customers and stakeholders to assess needs and satisfaction and to coordinate development of HCQIP program policy, regulations, legislative

proposals and communication strategy and implementation.

• Develops, implements, and interprets program policy and guidance pertaining to the implementation of the HCQIP and other Peer Review Organizations and End-Stage Renal Disease program statutory and regulatory responsibilities.

• Monitors legislative, regulatory and operational developments related to the HCQIP, and coordinates development of related regulations and legislative proposals.

• Develops and/or evaluates program-related data, including approaches and recommendations for improvements to program management and operations.

• Evaluates local project related data and develops communication strategies and tools for improvements to program management and operations (e.g., benchmarking and best practices.

• Evaluates customer service and system performance data and develops approaches for improvement.

• Assists in the development of functional requirements and specifications required for the design of information systems and evaluates the effectiveness of information systems.

h. Center for Clinical Measurement and Improvement (FLH8)

• Undertakes quality monitoring and improvement activities, studies and projects to support the Medicare Peer Review and End-Stage Renal Disease programs.

• Coordinates the development and measurement of improvement strategies and implementation approaches for the Health Care Quality Improvement Program (HCQIP) including the development, assessment, compilation, preparation, and dissemination of information on the quality and efficiency of care.

• Coordinates development of quality improvement project guidelines and mechanisms and implementing instructions for HCQIP contractors. Areas of concentration for the project process include identifying opportunities for improvement, developing project plans, and evaluating the effectiveness, efficiency, and appropriateness of projects.

• In partnership with central and regional office staff, coordinates and oversees systems for assessing contractor performance.

• Develops, implements, interprets, and oversees data driven performance measurement and quality improvement efforts to assess/improve quality of care provided to Medicare beneficiaries in all populations. Areas of concentration include clinically-oriented projects in the areas of managed care, acute care, ambulatory care, and ESRD.

• Collaborates with customers and stakeholders, public and private sector individuals, and groups in the development of performance measures and quality improvement strategies of mutual benefit and interest.

• Manages the Clinical Data Abstraction Centers and other mission-specific contracts.

• Manages the Medicare Quality Indicator System.

• Maintains liaison with the regional offices, and other internal and external HCQIP customers and stakeholders to assess needs and satisfaction and to coordinate development of HCQIP program policy, regulations, legislative proposals and quality measurement and improvement plans.

• Assists in the development of functional requirements and specifications required for the design of information systems and evaluates the effectiveness of information systems.

• Develops and implements quality monitoring and improvement studies/projects. Serves as content experts within the Bureau and partners with other Bureaus and regional office components to ensure full completion of all aspects of these studies/projects, including evaluation, follow-up, communication, marketing and intervention strategies.

• Develops, implements, and interprets program policy and guidance pertaining to the implementation of the HCQIP.

• Develops and/or evaluates program-related data, including approaches and recommendations for improvements to program management and operations.

• Evaluates customer service and system performance data and develops approaches for improvement.

Dated: July 31, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–20692 Filed 8–21–95; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

Division of Research Grants; 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: October 6, 1995.
Time: 9:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda MD 20892, (301) 435–1245.

Name of SEP: Behavioral and Neurosciences.
Date: October 25–27, 1995.
Time: 8:00 a.m.
Place: One Washington Circle, Washington, DC.
Contact Person: Dr. David Simpson, Scientific Review Administrator, 6701 Rockledge Drive, Room 5192, Bethesda MD 20892, (301) 435–1278.

Name of SEP: Microbiological and Immunological Sciences.
Date: August 22, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 4182, Telephone Conference.
Contact Person: Mr. William Branche, Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda MD 20892, (301) 435–1148.

Name of SEP: Microbiological and Immunological Sciences.
Date: August 29, 1995.
Time: 11:00 a.m.
Place: NIH, Rockledge II, Room 4182, Telephone Conference.
Contact Person: Mr. William Branche, Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda MD 20892, (301) 435–1148.

Name of SEP: Microbiological and Immunological Sciences.
Date: November 3, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda MD 20892, (301) 435–1146.

Name of SEP: Multidisciplinary Sciences.
Date: October 20, 1995.
Time: 1:00 p.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Nadarajen A. Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, MD 20892, (301) 435–1176.

Name of SEP: Multidisciplinary Sciences.
Date: November 6–7, 1995.
Time: 8:00 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Nadarajen A. Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda MD 20892, (301) 435–1176.

Name of SEP: Multidisciplinary Sciences.
Date: October 23–24, 1995.
Time: 8:00 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda MD 20892, (301) 435–1177.

Name of SEP: Multidisciplinary Sciences.
Date: October 25–26, 1995.

Time: 8:00 a.m.

Place: Doubletree Hotel, Rockville, MD.

Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda MD 20892, (301) 435–1177.

Name of SEP: Multidisciplinary Sciences.

Date: November 2, 1995.

Time: 8:00 a.m.

Place: Embassy Suites, Washington, DC.

Contact Person: Dr. Eileen Bradley, Scientific Review Administrator, 6701 Rockledge Drive, Room 5120, Bethesda MD 20892, (301) 435–1178.

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 discussion 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 meetings 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: August 17, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–20883 Filed 8–18–95; 1:39 pm]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. FR–3820–N–02]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 16, 1995.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Base Closure Community Redevelopment and Homeless Assistance Program.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: This interim rule implements the Base Closure Community Redevelopment and Homeless Assistance Act. The rule describes the roles and responsibilities in planning and implementing the reuse of domestic military installations that are approved for closure or realignment.

Form Number: None.

Respondents: State, Local, or Tribal Government and Not-for-Profit Institutions.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	271		1		Varies		19,860

Total Estimated Burden Hours: 19,860.

Status: New.

Contact: Perry Vietti, HUD, (202) 708–1915; Joseph F. Lackey, Jr., OMB, (202) 708–7316.

Dated: August 16, 1995.

[FR Doc. 95–20714 Filed 8–21–95; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Resource Advisory Councils; Establishment

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Councils—Notice of establishment; notice of meeting.

SUMMARY: This notice announces the establishment of 21 Resource Advisory Councils for the States of Alaska, Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming by the Secretary of the Interior in accordance with the provisions of the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix. The Secretary has determined that the Councils are necessary and in the public interest. Copies of the Councils' charters will be filed with the appropriate committees of Congress and the Library of Congress in accordance with Section 9(c) of FACA.

The 21 Councils are: Alaska, Alaska Resource Advisory Council; Arizona, Arizona Resource Advisory Council; California, Bakersfield Resource Advisory Council, Susanville Resource Advisory Council, and the Ukiah Resource Advisory Council; Idaho, Lower Snake River Resource Advisory Council, Upper Columbia-Salmon/Clearwater Resource Advisory Council, and Upper Snake River Resource Advisory Council; Montana/North and South Dakota, Butte Resource Advisory Council, Lewistown Resource Advisory Council, Miles City Resource Advisory Council, and Dakotas Resource Advisory Council; Nevada, Mojave-Southern Great Basin Resource Advisory Council, Northeastern Great Basin Resource Advisory Council, and Sierra Front-Northwestern Great Basin Resource Advisory Council; New Mexico, New Mexico Resource Advisory Council; Oregon/Washington, John Day-Snake Resource Advisory Council, Southeast Oregon Resource Advisory Council, and Eastern Washington Resource Advisory Council; Utah, Utah Resource Advisory Council; Wyoming, Wyoming Resource Advisory Council. The following Councils in Colorado have already been established: Front Range Resource Advisory Council, Northwest Resource Advisory Council, and the Southwest Resource Advisory Council.

The Federal Land Policy and Management Act, as amended, requires the Secretary to establish advisory councils to provide advice concerning the problems relating to land use planning and the management of public lands within the area for which the advisory councils are established. The Bureau of Land Management (BLM) Councils will provide representative counsel and advice to the BLM on the planning and management of the public lands, as well as advice on other public land resource issues. Council members will be residents of the State in which the Council has jurisdiction and will be appointed by the Secretary.

In a **Federal Register** Notice of August 7, 1995 (60 FR 40191), the Department of the Interior announced the establishment of three Resource Advisory Councils for Colorado. They are the Front Range Resource Advisory Council, the Northwest Resource Advisory Council, and the Southwest Resource Advisory Council.

Concurrent meetings of all 24 Resource Advisory Councils will be held on September 21–22, 1995, in Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North/South Dakota, Oregon, Utah, Washington, and Wyoming. The times and locations of the meetings will be announced in local media for each of the States and the **Federal Register** prior to the meeting. The purpose of the meetings is to discuss the operation, organization, and general goals of the Councils. The meetings will be open to the public. Individuals who plan to attend and need further information about the meetings or need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the External Affairs Office of the appropriate BLM State Office listed below.

Alaska, 222 W. 7th Avenue #13, Anchorage, Alaska 99513–7599
Arizona, 3707 North 7th Street, PO Box 18563, Phoenix, Arizona 85014
California, 2800 Cottage Way, E–2841, Sacramento, California 95825–1889
Colorado, 2850 Youngfield Street, Lakewood, Colorado 80215–7076
Idaho, 3380 Americana Terrace, Boise, Idaho 83706
Montana/North and South Dakota, 222 N. 32nd Street, PO Box 36800, Billings, Montana 59107–6800
Nevada, 850 Harvard Way, PO Box 12000, Reno, Nevada 89520–0006
New Mexico, 1474 Rodeo Road, PO Box 27115, Santa Fe, New Mexico 87502–0115
Oregon/Washington, 1515 S.W. 5th Avenue, PO Box 2965, Portland, Oregon 97208–2965
Utah, 324 South State Street, PO Box 45155, Salt Lake City, Utah 84145–0155
Wyoming, 2515 Warren Avenue, PO Box 1828, Cheyenne, Wyoming 82003

FOR FURTHER INFORMATION CONTACT: Chris Wood, Policy Analyst, Office of the Assistant Director for Resource Assessment and Planning, Bureau of Land Management, room 5558, U.S. Department of the Interior, Washington, DC 20240, telephone (202) 208–7013, or Tim Salt, Western Rangelands Lead, Bureau of Land Management, Room 5546, U.S. Department of the Interior, Washington, DC 20240, telephone (202) 208–4256.

SUPPLEMENTARY INFORMATION: The purpose of the Councils is to advise the Secretary, through the BLM, on a variety of planning and management issues associated with the management of the public lands. The Councils' responsibilities include: Providing advice to BLM regarding the preparation, amendment, and implementation of land use plans; providing advice on long-range planning and establishing resource management priorities; and assisting the BLM to identify State or regional standards for ecological health and guidelines for grazing. Council members will be representative of various industries and interests concerned with the management, protection, and utilization of the public lands. These include: (a) Holders of Federal livestock grazing permits and representatives of energy and mining development, the timber industry, rights-of-way interests, off-road vehicle use, and developed recreation; (b) representatives of environmental and resource conservation organizations, archaeological and historic interests, and wild horse and burro groups; and (c) representatives of State and local government, Native American tribes, academia involved in the natural sciences, and the public at large.

Membership will include individuals who have expertise, education, training, or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the respective Councils.

Certification

I hereby certify that the Alaska, Alaska Resource Advisory Council; Arizona, Arizona Resource Advisory Council; California, Bakersfield Resource Advisory Council, Susanville Resource Advisory Council, and Ukiah Resource Advisory Council; Idaho, Lower Snake River Resource Advisory Council, Upper Columbia-Salmon/Clearwater Resource Advisory Council, and Upper Snake River Resource Advisory Council; Montana/North and South Dakota, Butte Resource Advisory Council, Lewistown Resource Advisory Council, Miles City Resource Advisory Council, and Dakotas Resource Advisory Council; Nevada, Mojave-Southern Great Basin Resource Advisory Council, Northeastern Great Basin Resource Advisory Council, and Sierra Front-Northwestern Great Basin Resource Advisory Council; New Mexico, New Mexico Resource Advisory Council; Oregon/Washington, John Day-Snake Resource Advisory Council, Southeast Oregon Resource Advisory Council, and Eastern Washington Resource Advisory Council; Utah, Utah Resource Advisory Council; and Wyoming, Wyoming Resource Advisory Council are in the public interest in connection with the Secretary of the Interior's statutory responsibilities to manage the lands and resources administered by the Bureau of Land Management.

Date signed: August 16, 1995.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 95–20686 Filed 8–21–95; 8:45 am]

BILLING CODE 4310–84–P

Bureau of Land Management

[ES–960–1910–00–4489; ES–47531, Group 25, Illinois]

Filing of Plat of Survey; Illinois

The plat, in four sheets, of the dependent resurvey of the north boundary of U.S. Survey No. 622, and a portion of the subdivisional lines; the survey of the subdivision of sections 28 and 29 and the Horseshoe Lake Acquisition Boundary, Township 3 North, Range 9 West, Third Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 28, 1995.

The survey was made at the request of the Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 28, 1995.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: August 14, 1995.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 95–20700 Filed 8–21–95; 8:45 am]

BILLING CODE 4310–GJ–M

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–805737

Applicant: Woodward-Clyde Consultants, Franklin, Tennessee.

The applicant requests a permit to take (live-capture, handle, and release) Higgins' Eye Pearly Mussels (*Lampsilis higginsi*) in the Mississippi River, Iowa side, between river mile 491 and 487 (Pool 15) for population surveys aimed at enhancement of propagation or survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with Woodward-Clyde's application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536, x 250); FAX: (612/725–3526).

Dated: August 16, 1995.

John A. Blankenship,

Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 95–20724 Filed 8–21–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Intent to Issue of an Incidental Take Permit, PRT–802986, to Aronov Realty Management, Incorporated, in Baldwin County, Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Public Notification of an Intent to Issue a Section 10(a)(1)(B) Incidental Take Permit and Announcement of a Public Workshop/Informational Meeting to Discuss Section 10 of the Endangered Species Act and Management of the Bon Secour National Wildlife Refuge.

SUMMARY: The Fish and Wildlife Service gives Notice Of An Intent to Issue an incidental take permit to Aronov Realty and Management Incorporated for the endangered Alabama Beach Mouse pursuant to the Service's authority under Section 10(a)(1)(B) of the Endangered Species Act of 1973 as amended (16 U.S.C. 1631 *et seq.*). The Service's decision is reached after review of public comments on the application, the adequacy of minimization and mitigation measures outlined in the Applicant's Habitat Conservation Plan as measured against the Service's issuance criteria found at § 17.22 and § 13.21, and the availability of the best biological and commercial data available on the Alabama beach mouse.

The Service published in the **Federal Register** a notice of availability of the Applicant's Habitat Conservation Plan and the Service's Environmental Assessment on May 30, 1995 (60 FR 28428). The permit number PRT–802986 was assigned to the Applicant. The original public comment period was to close on June 30, 1995. In the intervening period, however, the Applicant proposed additional mitigation and minimization measures for the project. In response to this additional submittal, the Service extended the public comment period of the application to July 15, 1995 through another **Federal Register** notice dated June 20, 1995 (60 FR 32161–32162).

During the public comment period, the Service received two requests for the Applicant's Habitat Conservation Plan and the Service's draft Environmental Assessment for the project. The two requestors of the documentation did not provide the Service any comments on the application. One request for the documentation was received after the close of the public comment period and was provided to the requestor. The Service did receive, however, 23 individual comment letters from members of the public, none of whom requested in writing the documents available in either of the **Federal Register** notices. All of the public comment letters expressed objections to the Applicant's request for incidental taking of the Alabama beach mouse and other concerns as outlined in the Supplementary Information section of this notice. Because the Service has decided to issue a permit contrary to objections, the Service is publishing this notice pursuant to § 17.22(c)(2) and it is to serve as the 10-day notice to objecting parties.

DATES: The Service will likely issue an incidental take permit to the Applicant no earlier than 10 days after the date of this **Federal Register** notice but no later than 60 days of this **Federal Register** notice.

ADDRESSES: Any questions regarding this action should be addressed to Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7280).

FOR FURTHER INFORMATION CONTACT: Rick G. Gooch at the Atlanta, Georgia, Regional Office at 404/679–7110.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of any threatened or endangered species, including the Alabama beach mouse. The Service, under limited circumstances, may issue authorizations to take threatened and endangered wildlife species if such taking is

incidental to, and not the purpose of, otherwise lawful activities.

As stated above, the Service received 23 public citizen comment letters, 22 of which were received during the open public comment period. One additional comment letter, which was actually submitted as a supplementary comment letter from the conservation organization, was received after the close of the public comment period. The Service's response to all public comments are set forth in this notice.

Both general and specific public comments are broken down as follows, with an accompanied Service response:

Specific Public Concern 1

The mitigation/minimization measures, including the control of cats, lighting restrictions, monitoring and control of the Alabama beach mouse competitors, as outlined for the project will not be enforceable.

Service Response: The Section 10 permit process provides the opportunity for complete compliance by the permittee with a granted permit through enforcement of the permit's terms and conditions.

Section 11 of the Act, Penalties and Enforcement, provides for civil and/or criminal penalties for any person, including a business entity, who knowingly violates any provision of any permit issued under the Act. The mitigation and minimization measures outlined in the Habitat Conservation Plan will become binding provisions of the incidental take permit and will therefore become enforceable against all persons who hold title to the land for the duration of the permit.

Specific Public Concern 2

One commentor felt that the applicant's earlier negotiations with the Service concerning the possible sale of the land showed a lack of cooperations, because, in the commentor's opinion, the asking price was too high. The commentor urged the Service to view the applicant's earlier non-cooperation as grounds for the Service to be ''uncooperative'' in processing the Section 10 permit application.

Service Response: The Service finds this comment to be without support. Even if the commentor could demonstrate that the applicant had not been cooperative in earlier land acquisition negotiations, that fact would be irrelevant. The Service has worked cooperatively with the applicant on an acceptable design of the project. The Service has certain regulations which limit its ability to offer more than the market value for a piece of property it wishes to acquire, either from a willing seller or through condemnation. The statutory and regulatory criteria for Section 10 permit issuance does not address an applicant's behavior, whether it is cooperative or uncooperative.

Specific Public Concern 3

Insufficient biological data was used in the analysis of the impact of the project on the Alabama beach mouse.

Service Response: The biological surveys conducted on the project were approved by the Service and achieved the expected result of identifying, in a qualitative manner, the general distribution and population density of the Alabama beach mouse relative to the site's habitat features. This data confirms the current scientific literature for habitat selection of the Alabama beach mouse, and it provides an accurate assessment of the population size and identifies habitat utilization patterns. Additional survey data will not increase the Service's ability to drawn conclusions of the effects of construction of this project on the Alabama beach mouse.

Specific Public Concern 4

Development should be redesigned to avoid take of the Alabama beach mouse.

Service Response: The Applicant, through consultation with the Service, designed the project to minimize take of the Alabama beach mouse. Alternatives explored by the applicant on design of the project are identified in the Habitat Conservation Plan, including a no-build alternative and several alternatives constructing a higher-density development. It is the Service's position that the Section 10 issuance criteria, including the criteria that the take be minimized and mitigated to the maximum extent practicable, has been met in this case.

General Public Concern 1

Issuance of the incidental take permit will lead to a taking of an endangered species, destroy the Alabama beach mouse, or otherwise not promote the conservation of the species.

Service Response: A central premise of Section 10 of the Act is to provide a legal means for private landowners to take, incidental to other lawful activities, members of endangered or threatened wildlife in exchange for a conservation plan (a Habitat Conservation Plan) which minimizes and/or mitigates permitted take to the benefit of the species.

The project may result in incidental taking of the Alabama beach mouse in some areas. However, the Habitat Conservation Plan and the implementing permit will contain minimization and mitigation measures to minimize losses of individual Alabama beach mouse. Design of each building's footprint, as outlined in the Habitat Conservation Plan, will minimize destruction of secondary dunes and interdunal swales. Conservation of the secondary dune system, the interdunal swale systems and all of the primary dune system will be achieved. No construction of habitable buildings is proposed within the primary dune system, which is the critical habitat of the Alabama beach mouse. Controlling cats, a known predator of the Alabama beach mouse, and addressing other indirect effects of human habitation of the project, are also required as a result of issuance of a permit. The competitors of the Alabama beach mouse will also be monitored over the life of the project. Control of human access to the beach will be maintained through construction of boardwalks over the primary dune system. All of these measures are mandatory elements of accepting the project and compliance is assured through enforcement of the permit.

On review of the action of issuance of the permit and these measures, and use of the best biological and commercial data available on the species affected, the Service expects that the project will result in minimal effects to the extant Alabama beach mouse population.

General Public Concern 2

Issuance of this incidental take permit will lead to future coastal development projects on the Fort Morgan peninsula which will impact the Alabama beach mouse population.

Service Response: Most of the private land which fronts the Gulf of Mexico on the Fort Morgan peninsula has the potential to support the Alabama beach mouse. Consequently, every private landowner seeking incidental take of endangered species will likely use the Section 10 permit or Section 7 consultation process. The Service for the past 2 years has secured Section 10 permits from every high density or large-scale development on the Fort Morgan Peninsula, as well as from several small property owners. It is therefore reasonable to conclude that cumulative detrimental effects to extant Alabama beach mouse populations from continued gulf-front construction will be minimized through use of the Section 10 permits for coastal development. Also, it is important to note that the Act is not a land use regulation. Only local authorities (States and local governments) have the ability to dictate zoning or other community safety,

health and welfare issues. Development on the Fort Morgan peninsula will occur regardless of whether or not a Section 10 permit is obtained from the Service. The Section 10 process addresses the impact of otherwise lawful activities such as residential and commercial development on an endangered and/or threatened wildlife species and provides a mechanism for resolution of endangered species conservation and private economic development. The applicant is required to comply with all other laws and authorities to maintain the validity of an issued incidental take permit for the Alabama beach mouse.

General Public Concern 3

The project would be constructed inside the Bon Secour National Wildlife Refuge or otherwise compromise the biological resources of the refuge.

Service Response: The lands subject to the application are currently privately-owned, they are not owned or controlled by the Service or any other governmental agency. They are identified, however, as Priority I acquisition lands for inclusion into the refuge. This designation does not alter ownership or restrict private property rights. The Service concluded in the Environmental Assessment on the project that acquisition of the site is the environmentally preferred alternative, and would very much like to acquire the lands owned by the Applicant for inclusion into the refuge. The Service, as outlined in detail in the Environmental Assessment, has several options: (1) Condemn the property, (2) accept it from (donated by) the applicant, (3) acquire it from a willing seller at market value, or (4) have the lands acquired by a third-party and donated to the Service.

The Service has no funding immediately available to purchase the land, nor are monies likely to be available in the foreseeable future. There is no reliable way to predict when or if the property would be acquired, since a willing seller must be available for acquisition by others (Option 4 above). The applicant has not indicated a willingness to donate the property, nor sell it to the Service at an agreed-upon price. Based on this uncertainty, it is problematical at best to identify specific time schedules for acquisition. The situation is similar should the Service pursue condemnation of the property. The action of condemnation of the parcel for inclusion into the refuge is separate but related to the action before the Service, (e.g., determining whether the Applicant's proposal satisfies conditions for an incidental take permit). The statutory requirements of the Act do not allow the Service to delay, or hold in abeyance, a decision of issuance or denial on the application for incidental taking, while acquisition funding is sought. Note also, that even if an incidental take authorization is granted for the project, it will not preclude the ability of the Service to exercise any options for land acquisition presented in the above discussion should the property not be developed.

General Public Concern 4

Many commentors requested a public hearing to allow the community to share its opinions on the project.

Service Response: The Act and its governing regulations mentioned above do not require the Service to hold a public hearing for receipt of applications for incidental taking. A 45-day public comment period was provided for review of the documentation associated with the request for incidental taking by the project. After review of these comments, the Service concludes that no substantial new information on the effects of the project on the Alabama beach mouse was provided. The public comments submitted did indicate numerous misperceptions concerning the Section 10 permit process and raised numerous questions concerning the management of the adjacent refuge.

The Service will hold a public informational workshop near the project site in Baldwin County as specified below:

Date: September 6, 1995.

Location: Gulf Shores Adult Activity Center, 260 Clubhouse Drive, Gulf Shores, Alabama.

Time: 6:30 p.m. to 9:30 p.m.

The purpose of this public information meeting will be to provide opportunities for the Service to explain the role of the Section 10 process when reviewing private developments which may affect endangered species, to explain the status of the Service's land acquisition efforts in the refuge, and to discuss other matter germane to the refuge. All members of the public are invited to attend this informational meeting.

Dated: August 15, 1995.

Noreen K. Clough,

Regional Director.

[FR Doc. 95–20725 Filed 8–21–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Offshore Pipelines

AGENCIES: Minerals Management Service (MMS), Department of the Interior (DOI), and Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of extension of comment period.

SUMMARY: This notice extends the comment period for the proposed memorandum of understanding (MOU) between MMS and RSPA on their respective responsibilities concerning offshore pipelines published May 24, 1995 (60 FR 27546), from August 22, 1995, to September 22, 1995.

DATES: Interested persons are invited to submit comments by September 22, 1995.

ADDRESSES: Written comments should be directed concurrently to: (a) John V. Mirabella, Chief, Engineering and Standards Branch; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; and (b) L. E. Herrick, Office of Pipeline Safety Regulatory Programs; Research and Special Programs Administration; 400 Seventh Street SW., room 2335, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Carl W. Anderson, Engineering and Standards Branch, MMS; telephone (703) 787–1600; or L. E. Herrick, Office of Pipeline Safety Regulatory Programs, RSPA; telephone (202) 366–5523.

SUPPLEMENTARY INFORMATION: The American Petroleum Institute (API) requested a 30 day extension of time be granted for public comment to the proposed MOU between MMS and RSPA on their respective responsibilities concerning offshore pipelines. The request argued an extension of time was necessary to allow API members time to review the proposal, to meet and discuss the issues, and to prepare detailed responses to the proposal.

RSPA and MMS have decided the 30 day extension to the public comment period is reasonable to allow API to meet and respond to the MOU. The comment period will therefore be extended to close on September 22, 1995.

Authority: 49 U.S.C. Chapter 601; 43 U.S.C. 1331 et seq.

Issued in Washington, DC on August 16, 1995.

Thomas Gernhofer,

Associate Director for Offshore, Minerals Management Minerals Management Service.

Lucian M. Furrow,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 95–20797 Filed 8–21–95; 8:45 am]

BILLING CODE 4910–60–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 12, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by September 6, 1995.

Carol D. Shull,

Keeper of the National Register.

ARIZONA

Cochise County

St. Patrick's Roman Catholic Church,
Oak Ave., on Higgins Hill,
Bisbee, 95001080
Treu, John, House,
205 W. Vista, Warren Townsite,
Bisbee, 95001077

Maricopa County

Sirrine House,
160 N. Center St.,
Mesa, 95001082
Swindall Tourist Inn,
1021 E. Washington St.,
Phoenix, 95001081
Verde Park Pumphouse,
Jct. of 9th St. and Van Buren Ave.,
Phoenix, 95001078

Pinal County

Rancho Solano,
34145 S. Golder Dam Rd.,
Catalina, 95001079

ARKANSAS

Benton County

Reeves House
(Benton County MPS),
321 S. Wright St.,
Siloam Springs, 95001091

Faulkner County

Greeson—Cone House,
928 Center St.,
Conway, 95001094

Lee County

Lee County Courthouse,
15 E. Chestnut St.,
Marianna, 95001090

Mississippi County

First Baptist Church,
513 S. Pecan St.,
Osceola, 95001083

Monroe County

Abramson House,
127 Crescent Heights,
Holly Grove, 95001092

Washington County

Maguire—Williams House,
AR 74 E of jct. with AR 16,
Elkins vicinity, 95001093

COLORADO

Denver County

Tilden School for Teaching Health,
Jct. of W. Fairview Pl. and Grove St.,
Denver, 95001068

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Tower Building,
1401 K St., NW.,
Washington, 95001084
US General Accounting Office Building,
441 G St., NW.,
Washington, 95001086

FLORIDA

Volusia County

Haynes, Alexander, House,
128 W. Howry Ave.,
DeLand, 95001070

NEW YORK

Cattaraugus County

Salem Welsh Church,
11141 NY 98 at jct. with Galen Hill Rd.,
Freedom, 95001065

TENNESSEE

Giles County

Lairdland Farm House,
3238 Blackburn Hollow Rd.,
Brick Church vicinity, 95001088

Shelby County

Barton, Pauline Cheek, House,
6562 Green Shadows Ln.,
Memphis, 95001069

TEXAS

Dallas County

Kessler Park Historic District (Boundary Increase)
(Oak Cliff MPS),
Bounded by Turner, Colorado, Sylvan and Salmon,
Dallas, 95001087

UTAH

Kane County

Kanab Library
(Public Works Buildings TR)
600 South 100 E.,
Kanab, 95001067

VIRGINIA

Spotsylvania County

Woodstock Historic District,
Roughly bounded by N. Main, E. North and Water Sts., Cemetery Rd. and the Southern RR tracks,
Woodstock, 95001089

WYOMING

Converse County

Braehead Ranch,
69 Moss Agate Rd.,
Douglas vicinity, 95001074

Platte County

Grant, Robert, Ranch,
433 Richeau Rd.,
Wheatland vicinity, 95001073

Teton County

Van Vleck House and Barn,
135 E. Broadway,
Jackson, 95001075

[FR Doc. 95–20759 Filed 8–21–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a request from Reebie Associates for permission to use certain data from the Commission's 1994 I.C.C. Waybill Sample. A copy of the request (WB654___1–8/4/95) may be obtained from the I.C.C. Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Secretary.

[FR Doc. 95–20761 Filed 8–21–95; 8:45 am]

BILLING CODE 7035–01–P

Release of Waybill Data

The Commission has received a request from Mayer, Brown & Platt for permission to use certain data from the Commission's 1993 and 1994 I.C.C. Waybill Samples. A copy of the request (WB476–8/9/95) may be obtained from the I.C.C. Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's

Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Secretary.

[FR Doc. 95–20760 Filed 8–21–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 20, 1995, Ganes Chemicals, Inc., Industrial park Road, Pennsville, New Jersey 08070, made written request to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Methylphenidate (1724).

The firm plans to manufacture the Methylphenidate for distribution as a bulk product to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 23, 1995.

Dated: August 14, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–20753 Filed 8–21–95; 8:45 am]

BILLING CODE 4410–09–M

National Institute of Justice

[OJP (NIJ) No. 1060]

RIN 1121–ZA22

Office of Justice Programs; National Institute of Justice Solicitation for Boot Camp Research and Evaluation

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Announcement of the availability of the National Institute of Justice Solicitation for Boot Camp Research and Evaluation.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

DATES: The deadline for receipt of proposals is close of business on October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Voncile Gowdy at (202) 307–2951, National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

The National Institute of Justice is soliciting research and evaluation proposals related to the use of boot camp programs in the sanctioning of offenders. Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''NIJ Invites Proposals for Boot Camp Research and Evaluation'' (refer to document no. SL000127). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.aspensys.com, or gopher to ncjrs.aspensys.com 71. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 95–20736 Filed 8–21–95; 8:45 am]

BILLING CODE 4410–18–P

[OJP (NIJ) No.1062]

RIN 1121–ZA24

Office of Justice Programs; National Institute of Justice Solicitation for an Evaluation of the HIDTA Program: High Intensity Drug Trafficking Areas

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Announcement of the availability of the National Institute of Justice Solicitation for an Evaluation of the HIDTA Program: High Intensity Drug Trafficking Areas.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531.

DATES: The deadline for receipt of proposals is close of business on September 22, 1995.

FOR FURTHER INFORMATION CONTACT: James Trudeau at (202) 307–1355, National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

High Intensity Drug Trafficking Areas (HIDTA's) are areas identified as having the most critical drug trafficking problems that adversely impact the rest of the country. The Director of the Office of National Drug Control Policy designates areas as HIDTA's pursuant to the Anti-Drug Abuse Act of 1988, as amended. In 1990, five areas were designated as HIDTA's—Houston, Los Angeles, Miami, New York City, and the Southwest Border, which extends from California through Texas.

The National Institute of Justice is soliciting proposals to conduct an evaluation of the HIDTA program in the five original sites. Funding for this award is tentatively set at $100,000. Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''National Institute of Justice Solicitation for an Evaluation of the HIDTA Program: High Intensity Drug Trafficking Areas'' (refer to document no. SL000134). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.aspensys.com, or gopher to ncjrs.aspensys.com 71. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 95–20737 Filed 8–21–95; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Application for BLS Occupational Safety and Health Statistics Cooperative Agreement

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Application for BLS Occupational Safety and Health Statistics Cooperative Agreement.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the address section of this notice.

DATES: Written comments must be submitted on or before October 23, 1995.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue NE., Washington, DC 20212. For further information contact Ms. Kurz on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Labor has delegated to BLS the authority to collect, compile and analyze statistical data on work-related injuries and illnesses. The Cooperative Agreement is designed to allow BLS to ensure conformance with program objectives. BLS has full authority over the financial operations of the statistical program. BLS requires financial reporting that will produce the information needed to monitor the financial activities of BLS Occupational Safety and Health Statistics grantees.

II. Current Actions

Continued collection of grantee financial information is necessary to maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics, as authorized by the Occupational Safety and Health Act of 1970 (Pub. L. 91–596). The burden estimates are based on actual experience of grantees completing the forms.

Public comments on the accuracy of the burden estimates as well as suggestions for reducing the burden are encouraged. BLS plans to implement a system of electronic filing for these forms for 1997, which should reduce the burden of collection. Signatures certifying the authenticity of the information will continue to be required.

Type of review: Extension.
Agency: Bureau of Labor Statistics.
Title: Application for BLS Occupational Safety and Health Statistics Cooperative Agreement.
OMB Number: 1220–0149.
Frequency: Annually and Quarterly.
Affected Public: State, Local or Tribal Government.
Number of Respondents: 57.
Estimated Time Per Respondent: 6 Hours.
Total Burden Hours: 342 Hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they also will become a matter of public record.

Signed at Washington, DC, this 14th day of August, 1995.

Peter T. Spolarich,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 95–20779 Filed 8–21–95; 8:45 am]

BILLING CODE 4510–24–M

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Compensation 2000: Albuquerque, New Mexico and Allentown, Pennsylvania Test

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection, ''Compensation 2000: Albuquerque, New Mexico and Allentown, Pennsylvania Test.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the address section of this notice.

DATES: Written comments must be submitted on or before October 23, 1995.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Ave. NE., Washington, DC 20212. For further information contact Ms. Kurz at 202—606–7628 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

This collection is a test of a new method of identifying and classifying occupations within an establishment. If successful, the new method could ultimately allow for joint collection of three separate statistical surveys of wage and benefit data; the Occupational Compensation Survey Program, the Employment Cost Index, and the Employee Benefits Survey. In addition to evaluating the results of the test for use in future surveys, BLS also will publish a bulletin containing the occupational earnings data collected.

II. Current Actions

The test will include establishments in the Albuquerque, New Mexico and Allentown, Pennsylvania metropolitan statistical areas, both in private industry and in State, Local or Tribal Government. It will be conducted in early 1996. Once each occupation has been selected and classified using the test methodology, earnings data for the occupation will be collected. A new data entry system using laptop computers also will be tested as part of the collection.

Type of Review: New.
Agency: Bureau of Labor Statistics.
Title: Compensation 2000: Albuquerque, New Mexico and Allentown, Pennsylvania Test.
Frequency: One time.
Affected Public: Business or other for-profit; Not-for profit institutions; and State, Local or Tribal Government.
Number of Respondents: 298.

Estimated Time Per Respondent: 2 Hours.

Total Burden Hours: 596 Hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they also will become a matter of public record.

Signed at Washington, DC, this 14th day of August, 1995.

Peter T. Spolarich,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 95–20778 Filed 8–21–95; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 1, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 1, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 7th day of August, 1995.

Russell Kile,

Acting Program Manager, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 08/07/95

TA–W	Subject Firm (Petitioners)	Location	Date of petition	Product(s)
31,302	Lockheed-Martin (Wkrs)	East Windsor, NJ	06/26/95	Communications Satellites.
31,303	St. Thomas Leather Goods (LGPN)	Gloversville, NY	07/25/95	Leather Accessories.
31,304	Curtis Industrial, Inc. (UAW)	Eastlake, OH	07/25/95	Key Machines, Key Blanks, Key Guns.
31,305	Perdikas, Williams & (Wkrs)	Dayton, OH	07/25/95	Contractors—Engineering & Clerical.
31,306	United Technology Motor (Wkrs)	Brownsville, TX	07/24/95	Window Lift Motors & Regulators.
31,307	Exide (Wkrs)	Hamburg, PA	07/24/95	Batteries.
31,308	American Safety Razor (Wkrs)	Staunton, VA	07/21/95	Disposal Shaving Razors.
31,309	Albert Given Mfg., Co. (ILGWU)	East Chicago, IN	07/25/95	Men's Slacks.
31,310	Cassaro Manufacturing Co. (Wkrs)	Carbondale, PA	07/24/95	Children's Dresses.
31,311	Hillin Simon/Prime (Co)	Midland, TX	07/24/95	Oil & Gas Exploration, Production.
31,312	Gould Shawmut (Co.)	Marble Falls, TX	07/21/95	Fuse Blocks.
31,313	Horix Mfg., Co. (USWA)	McKees Rock, PA	07/24/95	Liquid Packaging Machinery.
31,314	Oregon-Natural Gas (Co.)	Portland, OR	07/18/95	Natural Gas.
31,315	Wirekraft Industries (Co.)	Ft. Smith, AR	07/25/95	Electrical Wiring, Harnesses.
31,316	Collegiate Pacific (Wkrs)	Roanoke, VA	07/27/95	Tee Shirts, Jackets, Caps.
31,317	Barrow Manufacturing Co (Co.)	Maysville, GA	07/27/95	Men's & Boys' Denim Jeans.
31,318	Barrow Manufacturing Co (Co.)	Dahlonega, GA	07/27/95	Men's & Boys' Denim Jeans.

[FR Doc. 95–20776 Filed 8–21–95; 8:45 am]

BILLING CODE 4510–30–M

Advisory Council on Unemployment Compensation; Hearings

SUMMARY: The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992 (57 FR 4007, Feb. 3, 1992). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the Council to evaluate the overall unemployment insurance program, including the purpose, goals, counter-cyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program, and to make recommendations for improvement.

TIME AND PLACE: The hearings will be held from 3 p.m. to 5 p.m. on September 13, 1995 at The Mills House Hotel, 115 Meeting Street, Charleston, South Carolina.

PUBLIC PARTICIPATION: The hearings will be open to the public. Seating will be available to the public on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the hearing.

SUBMITTING WRITTEN STATEMENTS: Individuals or organizations wishing to submit written statements should send fifteen (15) copies to Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210. Statements must be received not later than August 29, 1995.

PRESENTING ORAL STATEMENTS: Individuals or organizations wishing to present oral statements should send a written request to Ellen S. Calhoun, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–4206, Washington, DC 20210. Requests for presenting oral statements should indicate a daytime phone number. Time slots will be assigned on a first-come, first-served basis. All such requests must be received not later than August 29, 1995.

FOR ADDITIONAL INFORMATION CONTACT: Esther R. Johnson, Designated Federal Official, telephone (202) 219–7831. (This is not a toll-free number.)

Signed at Washington, DC, this 11 day of August 1995.

Timothy M. Barnicle,

Assistant Secretary of Labor.

[FR Doc. 95–20777 Filed 8–21–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–072)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Subcommittee on Flight Controls and Guidance; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Flight Controls and Guidance meeting.

DATES: September 27, 1995, 8 a.m. to 4:15 p.m.; September 28, 1995, 8 a.m. to 4:00 p.m.; and September 29, 1995, 8 a.m. to Noon.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1268A, Room 2120, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Mr. P. Douglas Arbuckle, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681, 804/864–4072.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Program Overview
—Subsonic Transportation Controls and Guidance
—Fly-By-Light/Power-By-Wire
—Terminal Area Productivity (TAP) Overview
—Transport Research Facilities Project
—High Alpha Technology Program

Dated: August 16, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 95–20733 Filed 8–21–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–073)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Committee.

DATES: September 28, 1995, 8:30 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 7H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aeronautics, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4729).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Overview
—Renassistance in Flight
—R&T Base Restructuring
—National Strategy Update
—Propulsion Subcommittee
—Wind Tunnel Update

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: August 16, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 95–20734 Filed 8–21–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–074]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC), Subcommittees on Aerodynamics, Flight Controls and Guidance, and Materials and Structures; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Joint meeting of the Subcommittees on Aerodynamics, Flight Controls and Guidance, and Materials and Structures.

DATES: September 26, 1995, 12:30 p.m. to 4:15 p.m.

ADDRESSES: NASA Langley Research Center, Building 1212, Room 200, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Mr. William P. Henderson, National Aeronautics and Space Administration, Hampton, VA 23681, 804/864–5017.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Chairman's Comments
—Introduction of Multi-Disciplinary Optimization (MDO) Program
—MDO Strategic Plans
—Interaction with Other NASA Programs
—Technical Progress
—Final Comments

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: August 16, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 95–20735 Filed 8–21–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as requires by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before October 6, 1995. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1–AFU–94–3). Logistical, transportation and financial records required to process foreign military sales.

2. Department of Energy (N1–434–95–1). Administrative records relating to Formula and Non-Formula Grant Programs.

3. Department of Health and Human Services (N1–468–95–2). Senior Staff Dining Room Bills.

4. Department of Health and Human Services (N1–468–95–3). Committee Availability Cards.

5. Department of the Treasury, United States Secret Service (N1–87–94–2). Training slide presentations documenting non-program related activities.

6. Defense Logistics Agency (N1–361–95–3). Complaint investigative case files.

7. Environmental Protection Agency (N1–412–95–3). Hazardous waste data management system and corrective action reporting system.

8. Executive Office of the President (N1–429–95–1). Office of National Drug Control Policy routine, administrative electronic and textual records, November 1989–July 1993.

9. Executive Office of the President (N1–429–95–2). Office of Administration electronic and textual records created after July 14, 1994 that deal with routine administrative matters. (Master File of E-Mail messages will be preserved.)

10. Federal Communications Commission (N1–173–95–1). Enforcement Division Informal Complaints and Inquiries.

11. Federal Maritime Commission (N1–358–95–1). Reading files, subject files, and workpapers to dockets maintained in the Office of the Managing Director.

12. The National Aeronautics and Space Administration (N1–255–94–3). Agency-wide research and development planning and operational records (chapters 7 and 8 of the NASA Records Disposition Handbook).

13. Office of Technology Assessment (N1–444–95–3). Working papers to closed and incomplete projects.

14. Pension Benefit Guaranty Corporation (N1–465–95–3). Records of the Case Operations and Compliance Department.

15. Pension Benefit Guaranty Corporation (N1–465–95–4). Records of the Office of the General Council.

16. U.S. Trade and Development Agency (N1–486–95–1). Comprehensive schedule providing for destruction of routine and facilitative records. Records that document overall policies, plans, procedures, and significant activities are scheduled as permanent.

Dated: August 14, 1995.

John W. Carlin,

Archivist of the United States.

[FR Doc. 95–20693 Filed 8–21–95; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 77th meeting on September 20 and 21, 1995, in Room T–2B3, at 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for this meeting shall be as follows:

Wednesday, September 20, 1995—8:30 a.m. until 6:00 p.m.

Thursday, September 21, 1995—8:30 a.m. until 6:00 p.m.

During this meeting the Committee plans to consider the following:

A. *Meeting with the Director, NRC's Division of Waste Management, Office of Nuclear Materials Safety and Safeguards*—The Director will discuss items of current interest related to the Division of Waste Management programs. Examples of issues include preliminary evaluation reports on Department of Energy studies.

B. *Meeting with NRC's General Counsel*—A representative of the Office of the General Counsel will discuss items of interest with the Committee. Items might include: The use of expert elicitation in a licensing hearing, the nature of federal rules of evidence, and the nature of organizational conflicts of interest.

C. *Meeting with the Director, NRC's Office of Nuclear Regulatory Research*—The Director will discuss items of interest with the Committee. Items might include: an overview of high- and

low-level waste disposal research and a discussion of the role of the Nuclear Safety Research Review Committee.

D. *The Vertical Slice Approach*—Representatives of NRC's Division of Waste Management will brief the Committee on plans for selected in-depth review (vertical slices) of DOE's site characterization program.

E. *Technical Bases for Yucca Mountain Standards*—The ACNW will be briefed by a member of the National Research Council's Committee on the Technical Bases for Yucca Mountain Standards. The topic will be the recently issued report on Yucca Mountain.

F. *Hydrology Research Program*—The ACNW will review the NRC staff hydrology research program, including the Apache Leap Test Site investigations.

G. *Natural Analog Workshop*—The NRC staff will report on a workshop held last year. Attempts to integrate natural analog studies and performance assessment will be highlighted.

H. *Preparation of ACNW Report*—The Committee will discuss proposed reports, including comments on NRC's Site Decommissioning Management Plan streamlining activities. Additional topics will be considered as time permits.

I. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will also discuss ACNW-related activities of individual members.

J. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 7, 1994 (59 FR 51219). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Major if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are not available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: August 16, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–20752 Filed 8–21–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 7–9, 1995, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 28, 1994 (59 FR 66977).

Thursday, September 7, 1995

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–10:15 a.m.: Action Plan Associated with Metal Fatique (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff Action Plan associated with metal fatigue.

Representatives of the industry will participate, as appropriate.

10:30 a.m.–12:30 p.m.: Maintenance Rule Inspection Procedures (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute (NEI) regarding the adequacy of the inspection procedures for evaluating the implementation of the Maintenance Rule, and the lessons learned from pilot inspections of early implementation of the Maintenance Rule at nine nuclear power plants.

1:30 a.m.–4:30 p.m.: Activities Associated With the Development of Improved NDE Techniques (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, NEI, and Electric Power Research Institute regarding the Generic Letter on Circumferential Cracking of Steam Generator Tubes as well as the ongoing and proposed activities to improve NDE techniques to more accurately detect and assess steam generator tube defects.

4:45 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as a proposed ACRS report on fire protection-related issues.

Friday, September 8, 1995

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:45 a.m.: Operator Licensing Examination Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed changes to the operator licensing examination process.

Representatives of the industry will participate, as appropriate.

9:45 a.m.–10:00 a.m.: Subcommittee Activities (Open)—The Committee will hear a report of the Thermal Hydraulic Phenomena Subcommittee regarding matters discussed during the July 26–27, 1995 Subcommittee meeting.

10:15 a.m.–11:00 a.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss organizational and

personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

11:00 a.m.–12:30 p.m.: INPO Event Assessment Process (Open)—The Committee will hear presentations by and hold discussion with representatives of INPO regarding the process being used by INPO for reviewing and evaluating events at domestic and foreign nuclear power plants.

Representatives of the NRC staff will participate, as appropriate.

1:30 p.m.–2:00 p.m.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

2:00 p.m.–2:15 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses expected from the NRC Executive Director for Operations to ACRS comments and recommendations included in recent ACRS reports.

2:15 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting, as well as a proposed ACRS report on fire protection-related issues.

Saturday, September 9, 1995

8:30 a.m.–11:00 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting, and on other matters noted above.

11:15 a.m.–11:30 a.m.: New Research Needs (Open)—The Committee will discuss new research needs, if any, identified during this meeting.

11:30 a.m.–12:45 p.m.: Strategic Planning (Open)—The Committee will discuss items that are of importance to the NRC which should receive additional emphasis in its future deliberations.

12:45 p.m.–1:00 p.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 5, 1994 (59 FR 50780). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301–415–7364), between 7:30 A.M. and 4:15 P.M. EDT.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Proposed ACRS Meeting Dates for Remainder of CY 1995—The revised ACRS meeting dates for CY 1995 are provided below:

ACRS meeting No.	1995 ACRS meeting dates
425	October 5–7, 1995.
426	November 2–4, 1995.
427	December 7–9, 1995.

Dated: August 16, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–20740 Filed 8–21–95; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guides; Availability

The Nuclear Regulatory Commission is pleased to announce that regulatory guides are now available to the public at no charge. The Regulatory Guide Series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted 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.

Regulatory guides are available for inspection at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Office of Administration, Attention: Distribution and Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; or by fax at (301)415–2260. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161, or by calling them at (703) 487–4650. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 15th day of August 1995.

For the Nuclear Regulatory Commission.

Carlton C. Kammerer,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 95–20747 Filed 8–21–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. STN 50–530]

Arizona Public Service Company, et al. (Palo Verde Nuclear Generating Station, Unit No. 3); Exemption

I

The Arizona Public Service Company, et al. (APS or the licensee) is the holder of Facility Operating License No. NPF–41, which authorizes operation of the Palo Verde Nuclear Generating Station (PVNGS), Unit No. 3. The license provides, among other things, that PVNGS, Unit 3, is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The PVNGS, Unit 3, facility is a pressurized water reactor located at the licensee's site in Maricopa County, Arizona.

II

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 requires the performance of three Type A containment integrated leakage rate tests (ILRTs) at approximately equal intervals during each 10-year service period of the primary containment. The third test of each set shall be conducted when the plant is shut down for the 10-year inservice inspection.

III

By letter dated June 21, 1995, the licensee requested an exemption from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), on a one-time schedular extension which would permit rescheduling the second containment integrated leak rate test (ILRT) in the first 10-year service period from the fifth refueling outage (3R5) currently scheduled for November 1995 to the sixth refueling outage (3R6) planned for April 1997.

The current ILRT requirements for PVNGS, Unit 3, as set forth in Appendix J, are that, after the pre-operational leak rate test, a set of three Type A tests must be performed at approximately equal intervals during each 10-year period. Also, the third test of each set must be conducted when the plant is shut down for the 10-year plant inservice inspection (ISI). The first periodic Type A test was performed in May of 1991 during the second refueling outage in Unit 3 (3R2), 40 months from the date of Unit 3 commercial operation. The second periodic test is currently scheduled to be performed in November of 1995 during the fifth refueling outage (3R5), corresponding to an interval of 54 months. The third Type A test is currently planned to be performed during the seventh refueling outage (3R7) which would coincide with the completion of the first 10-year ISI interval.

The proposed exemption would allow APS to delay the Unit 3 second Type A test until the sixth refueling outage (3R6). The Type A test would tentatively be scheduled for April of 1997, and would increase the interval between the first and second Type A test from 54 months to 71 months. The third Type A test is not being altered by this exemption request and will remain scheduled for the seventh refueling outage (3R7). This exemption request proposes an increase to the interval between the first and second Type A test but does not alter the frequency of testing (three Type A tests performed in a ten year period) during the first 10 year ISI interval.

IV

The previous testing history at PVNGS, Unit 3, provides substantial justification for the proposed test interval extension. Type A testing is performed to determine that the total leakage from primary containment does not exceed the maximum allowable leakage rate (L_a) as specified in the PVNGS, Unit 3, technical specifications (TS). The primary containment maximum allowable leakage rate provides an input assumption to the calculation required to ensure that the maximum potential offsite dose during a design basis accident does not result in a dose in excess of that specified in 10 CFR Part 100. The allowable L_a for PVNGS, Unit 3, is 0.10 percent by weight of the containment air per 24 hours at P_a, where P_a is defined as the calculated peak internal containment pressure related to the design basis accident, specified in the PVNGS TS as 49.5 psig. The acceptance criteria for the Type A test is 75 percent of L_a or 0.075 percent by weight of the containment air per 24 hours at P_a.

The licensee performed a plant-specific study concluding that the extension of the Type A test has a negligible impact on overall risk. This study relied heavily on the existing Type B and C testing program which is not affected by this exemption, and will continue to effectively detect containment leakage.

Additionally, the licensee stated that its exemption request meets the requirements of 10 CFR 50.12, paragraphs (a)(2)(ii) (the underlying purpose of the regulation is achieved).

The licensee categorized mechanisms that could cause degradation of the containment into two types: (1) degradation due to work which is performed as part of a modification or maintenance activity on a component or system (activity based); or (2) degradation resulting from a time based failure mechanism (i.e., deterioration of the containment structure due to pressure, temperature, radiation, chemical or other such effects). To address the potential degradation due to an activity based mechanism, the licensee reviewed containment system related modifications performed since the last Type A test. The licensee concluded that the modifications performed did not impact containment integrity, or the modifications have, or will be, tested adequately to ensure that there is no degradation from an activity based mechanism. In addition, the licensee maintains administrative controls which ensure that an appropriate retest, including local leak rate testing, if applicable, is specified for maintenance activities which affect primary containment integrity.

Regarding time based failure mechanisms, the licensee concluded that risk of a non-detectable increase in the primary containment leakage is considered negligible due to the 10 CFR Part 50, Appendix J, Type B and C testing program. The licensee stated that without actual accident conditions, structural deterioration is a gradual phenomenon which requires periods of time well in excess of the proposed 71-month test interval which would result by performing the second periodic Type A test during 3R6. Other than accident conditions, the only external mechanism inducing stress of the containment structure is the test itself. The licensee maintains that the longer test interval would, therefore, lessen the frequency of stressing the containment.

Additionally, the licensee has performed the general inspections of the accessible interior and exterior surfaces of the containment structures and components prior to the previous Type A tests, as required by 10 CFR Part 50, Appendix J, Section V.A. These inspections are intended to uncover any evidence of structural deterioration which may affect either the containment structural integrity or leak tightness. At PVNGS, Unit 3, there has been no evidence of structural deterioration that would impact structural integrity or leak tightness. Although the containment inspections required by Appendix J are limited in scope, they provide an important added level of confidence. The licensee has committed to perform the general containment inspection as originally scheduled, during the upcoming 3R5.

The preoperational and first periodic Type A tests performed in Unit 3 both passed the acceptance criteria with

adequate margin. The test results were 0.0521 and 0.062 percent by weight of the containment air per 24 hours at P_a, respectively. The Type A test results were confirmatory of the Type B and C tests, and demonstrate that PVNGS Unit 3 is a low-leakage containment. A test report for each of the Type A tests was submitted to the Commission for staff review in accordance with the reporting requirements of 10 CFR 50, Appendix J, Section V.B.

The 10 CFR 50, Appendix J, Type B tests are intended to detect local leaks and to measure leakage across pressure containing or leakage limiting-boundaries other than valves, such as, containment penetrations incorporating resilient seals, gaskets, doors, hatches, etc. The 10 CFR 50, Appendix J, Type C tests are intended to measure primary containment isolation valve leakage rates. The frequency and scope of Type B and C testing are not being altered by this proposed exemption request. The acceptance criteria for Type B and C testing is 0.6 L_a, or 0.06 percent by weight of the containment air per 24 hours at P_a. This acceptance criteria (0.6 L_a) is for the sum of all valves and penetrations subject to Type B and C testing and represents a considerable portion of the Type A test allowable leakage. The test results of the combined Type B and C leakage rates for Unit 3 were shown in a table on the licensee's exemption request submittal.

The Unit 3 test results are substantially below the allowable acceptance criteria for the combined Type B and C leakage rates. These test results demonstrate a good historic performance of the containment integrity system. The Type B and C testing program is not being altered by this exemption request and will continue to effectively detect containment leakage caused by activity based or time based failure mechanisms.

A plant-specific analysis for PVNGS was performed to evaluate the potential for extending the Type A test frequency. The PVNGS, Unit 3, plant-specific analysis considered the extension of the interval to as much as 240 months. The conclusion of the analysis was that the extension of the Type A test interval has a negligible impact on overall risk. The licensee's exemption request does not alter the frequency for performance of Type A testing (i.e., it still maintains a frequency of 3 tests per 10 years). However, the licensee maintains that the data from this study support the requested exemption from the requirement of 10 CFR Part 50, Appendix J, regarding ''approximately equal intervals.'' The interval between the first and second Type A tests would be 71 months with this exemption. The PVNGS, Unit 3, plant-specific analysis supports the use of a 240-month interval with a negligible impact on overall risk.

The licensee referenced 10 CFR 50.12(a)(2)(ii) as a basis for this exemption. This section defines such a circumstance where ''application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. * * *'' The underlying purpose of 10 CFR Part 50, Appendix J, Section III.D.1.(a), is to establish and maintain a level of confidence that any primary containment leakage, during a hypothetical design basis accident, will remain less than or equal to the maximum allowable value, L_a, by performing periodic Type A testing. Compliance with the ''approximately equal intervals'' clause of Appendix J is not necessary to achieve the underlying purpose of the rule, as explained in the above technical justification.

V

The Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determined, for the reasons discussed below, that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the requirement to perform Type A containment leak rate tests at intervals during the 10-year service period is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or becoming unknown. The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The NRC staff has noted that the licensee has a good record of ensuring a leak-tight containment. All Type A tests have passed with adequate margin. The licensee has also noted that the results of the Type A testing have been confirmatory of the Type B and C tests (which will continue to be performed). Additionally, the licensee has committed to perform the general containment inspection during the upcoming refueling outage (3R5), thereby providing an added level of confidence in the continued integrity of the containment boundary.

The NRC staff has also made use of a draft staff report, NUREG–1493, which provides the technical justification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. This is three percent of all failures. This study agrees with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks. The PVNGS–3 experience has also been consistent with this.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded 1.0 L_a. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than 2 L_a; in one case the leakage was found to be approximately 2 L_a; in one case the as-found leakage was less than 3 L_a; one case approached 10 L_a; and in one case the leakage was found to be approximately 21 L_a. For about half of the failed ILRTs, the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately 200 L_a, as discussed in NUREG–1493).

Based on generic and plant-specific data, the NRC staff finds that the licensee's proposed one-time exemption allowing APS to delay the Unit 3 second Type A test until the sixth refueling outage (3R6), which would increase the interval between the first and second Type A test from 54 months to 71 months, is acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that

granting this exemption will not have a significant impact on the human environment (60 FR 42189).

This exemption is effective upon issuance and shall expire at the completion of the 3R6 refueling outage.

Dated at Rockville, Maryland, this 16th day of August 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–20749 Filed 8–21–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–400]

Carolina Power & Light Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its March 20, 1995 application for proposed amendment to Facility Operating License No. NPF–63 for the Shearon Harris Nuclear Power Plant, Unit No. 1, located in New Hill, North Carolina 27562.

The proposed amendment would have revised the technical specifications to allow the relocation of cycle-specific Overpower and Overtemperature Delta T trip setpoint parameters to the Core Operating Limits Report. The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 26, 1995 (60 FR 20515). However, by letter dated August 3, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 20, 1995, and the licensee's letter dated August 3, 1995, which withdrew the application for license amendment. The above documents are 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 Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Dated at Rockville, Maryland, this 16th day of August 1995.

For the Nuclear Regulatory Commission.

Ngoc B. Le,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–20744 Filed 8–21–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

PECO Energy Company; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 209 and 213 to Facility Operating Licenses Nos. DPR–44 and DPR–56 issued to PECO Energy Company (the licensee), which revised the Technical Specifications for operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to provide for an increased allowed out-of-service time for the Peach Bottom emergency diesel generators based on the availability of a power tie-line from the Conowingo Hydroelectric Station.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on June 7, 1995 (60 FR 30120). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (60 FR 40866).

For further details with respect to the action see (1) the application for amendment dated April 7, 1994 and supplemented by letters dated June 2 and September 6, 1994 and June 16 and July 13, 1995, (2) Amendment Nos. 209/213 to Licenses Nos. DPR–44 and DPR–56, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are 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 Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania.

Dated at Rockville, Maryland, this 16th day of August 1995.

For the Nuclear Regulatory Commission.

Joseph W. Shea,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–20743 Filed 8–21–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–352 and 50–353]

Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2); Exemption

I

Pennsylvania Power and Light Company (the licensee), is the holder of Facility Operating License Nos. NPF–14 and NPF–22, which authorize operation of the Susquehanna Steam Electric Station (SSES), Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect. The facilities consist of two boiling water reactors located in Luzerne County, Pennsylvania.

II

Section 50.54(o) of 10 CFR Part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity of the primary reactor containment and systems and components which penetrate the containment. Sections II.H.4 and III.C.2(a) of Appendix J to 10 CFR Part 50 require leak rate testing of Main Steam Isolation Valves (MSIVs) at the calculated peak containment pressure related to the design basis accident, and Section III.C.3 requires that the measured leak rates be included in the combined local leak rate test results. The proposed deletion of the MSIV Leakage Control System (LCS), and proposed use of an alternate leakage pathway affects the description of an existing exemption which allows the leak rate testing of the MSIVs at a reduced pressure and the exclusion of

the measured leakage from the combined local leak rate test results. The original exemption is contained in the SSES Safety Evaluation Report (SER) (NUREG–0776).

By letter dated February 21, 1995, the licensee requested an exemption from the Commission's regulations. The subject exemption is from the requirements of 10 CFR Part 50, Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors,'' Sections II.H.4, III.C.2(a), and III.C.3, to allow alternative testing pressure and leakage limits for the MSIVs and to exclude MSIV leakage from the combined local leak rate test results after deletion of the LCS.

The staff issued for SSES, Units 1 and 2, the current exemption from 10 CFR Part 50, Appendix J, Sections II.H.4, III.C.2(a), and III.C.3, based on the conclusion that the SSES, Units 1 and 2, MSIV leak testing methods were acceptable alternatives to the requirements. This conclusion was included in the SSES SER (NUREG–0776). The SER also described that in the event of a loss-of-coolant-accident (LOCA), the MSIV LCS will maintain a negative pressure between the MSIV and the effluent will be discharged into a volume where it will be processed by the standby gas treatment system before being released to the environment. The licensee had performed a radiological analysis based on an assumed leak rate limit of 11.5 standard cubic feet per hour (scfh), and the MSIVs were planned to be periodically tested to ensure the validity of the radiological analysis. The staff concluded that the current SSES testing procedure, where two valves on one steam line are tested simultaneously, between the valves, utilizing a reduced test pressure (i.e., half the peak containment pressure of 22.5 psig applied between the MSIVs) was acceptable. Also, the staff excluded the MSIV test leakage rate from the combined local leak rate because the MSIV leakage had been accounted for separately in the radiological analysis of the site.

By letter dated November 21, 1994, the licensee submitted a Technical Specifications (TS) amendment request for SSES, Units 1 and 2, which supports the planned modification to eliminate the MSIV LCS and utilize an alternate leakage pathway (main steam lines and condenser). This proposal is based on the Boiling Water Reactor Owners Group (BWROG) method summarized in General Electric Report NEDC–31858P, Revision 2, ''BWROG Report for increasing MSIV Leakage Rate Limits and Elimination of Leakage Control System.'' Therefore, the description of the MSIV LCS and the assumed MSIV leak rate are no longer accurate once the proposed TS modification is performed and implemented.

The licensee's November 21, 1994, TS (amendment) request states that a plant-specific radiological analysis has been performed in accordance with NEDC–31858P, Revision 2, to assess the effects of the proposed increase to the allowable MSIV leakage rate in terms of Main Control Room (MCR) and off-site doses following a postulated design basis LOCA. This analysis utilizes the hold-up volume of the main steam piping and condenser as an alternate method for treating MSIV leakage. The radiological analysis uses standard conservative assumptions for the radiological source term consistent with Regulatory Guide (RG) 1.3, ''Assumptions Used for Evaluating the Potential Radiological Consequences of a Loss-of-Coolant-Accident for Boiling Water Reactors,'' Revision 2, dated June 1974. The analysis results demonstrate that dose contributions from the proposed MSIV leakage rate limit of 100 scfh per MSIV, not to exceed 300 scfh for all four main steam lines, and considering the proposed deletion of the MSIV LCS, result in an acceptable increase to the LOCA doses previously evaluated against the regulatory limits for the off-site doses and MCR doses contained in 10 CFR Part 100, and 10 CFR Part 50, Appendix A, General Design Criteria (GDC) 19, respectively. The proposed calculated off-site and MCR doses resulting from a LOCA are the sum of the LOCA doses previously evaluated (currently described in the Updated Final Safety Analysis Report), and the additional doses calculated using the alternate MSIV leakage treatment method. The method of calculating the revised doses is conservative, since the LOCA doses previously evaluated already include dose contributions from MSIV leakage at the maximum leakage rate currently permitted by the TS. Appendix 2 of Attachment 3 of the January 14, 1994, submittal shows the previously calculated doses and the new calculated doses resulting from the proposed changes.

The staff concluded that the current exemption was acceptable based on: the method of MSIV testing (i.e., 22.5 psig test pressure when applied between MSIVs on a single steam line); a radiological analysis that assumed a 11.5 scfh MSIV leak rate, and the licensee's commitment that the MSIVs would be periodically tested to ensure the validity of the radiological analysis (i.e., verify that the MSIV leakage rate during testing is accounted for separately in the radiological analysis of the site). The proposed changes do not affect the bases for the current exemption. The modification and implementing TS change request: will not alter the procedure method of MSIV testing (i.e., test pressure will remain at 22.5 psig when applied between MSIVs) and are based on the results of a radiological analysis where the proposed leakage rate and the resulting doses are still within regulatory limits. Also, the MSIVs will be periodically tested to assure the validity of the analysis (i.e., verify that the proposed MSIV leakage rate assumed in the radiological analysis is not exceeded per proposed TS 3.6.1.2.c), and the MSIV leakage will still be accounted for separately in the radiological analysis of the site.

For the reasons set forth above, the NRC staff concludes that there is reasonable assurance that: the current MSIV leak testing method (i.e., test pressure of 22.5 psig when applied between MSIV) is an acceptable method; the proposed alternate MSIV leakage pathway (main steam lines and condenser), and the calculated doses obtained by performing radiological analysis (calculated using an MSIV leakage rate limit of 100 scfh per MSIV not to exceed 300 scfh for all four main steam lines) are within the limits of 10 CFR Part 100 and GDC–19. The staff finds it acceptable to continue to exclude the measured MSIV leakage rate from the combined local rate, since the leakage is accounted for separately and continues to meet the underlying purpose of the rule. Therefore, the staff finds the requested exemption presented in the licensee's February 21, 1995, submittal acceptable.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *.''

The underlying purpose of the rule is to assure that the total valve leakage is within the limits of 10 CFR Part 100 and

GDC–19. The licensee's analysis has demonstrated that an adequate margin can be maintained even if leakage from the MSIV is considered separately and subject to a leakage restriction of 100 scfh per MSIV, not to exceed a total of 300 scfh for all four main steam lines.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR Part 50.12, an exemption is authorized by law and will not present an undue risk to the public health and safety, and that there are special circumstances present, as specified in 10 CFR 50.12(a)(2). An exemption is hereby granted from the requirements of Sections II.H.4, III.C.2(a), and III.C.3 of Appendix J to 10 CFR Part 50. The exemption allows (1) leakage testing of the MSIVs after deletion of the LCS, using a test pressure of 22.5 psig applied between MSIVs and a leakage rate limit of 100 scfh per MSIV, not to exceed 300 scfh for all main steam lines, and (2) exclusion of the measured MSIV leakage rate from the combined local leak rate.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 42192).

This exemption is effective upon issuance and will be implemented prior to startup of Cycle 7 for SSES, Unit 2, and prior to startup of Cycle 9 for SSES, Unit 1.

Dated at Rockville, Maryland this 15th day of August 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–20746 Filed 8–21–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–272]

Public Service Electric and Gas Co., Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Public Service Electric and Gas Company (the licensee) to withdraw its May 4, 1995 application for proposed amendment to Facility Operating License No. DPR–70 for the Salem Nuclear Generating Station, Unit No. 1, located in Salem, New Jersey.

The proposed amendment would have revised the Technical Specifications to allow a one-time extension of the interval for conducting the Containment Integrated Leak Rate test until the end of the twelfth refueling outage.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 23, 1995 (60 FR 27342). However, by letter dated August 2, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 4, 1995, and the licensee's letter dated August 2, 1995, which withdrew the application for license amendment. The above documents are 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 Salem Free Public Library, 112 West Broadway, Salem, New Jersey, 08079.

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

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–20742 Filed 8–21–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Office of Personnel Management (OPM) announces the next meeting of the National Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet September 12, 1995, at 1:30 p.m., in the auditorium of the Oakland Federal Building, 1301 Clay Street, Oakland, CA 94612–5213. The auditorium is located on the ground level.

TYPE OF MEETING: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

POINT OF CONTACT: Douglas K. Walker, National Partnership Council, Executive Secretariat, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5315, Washington, DC 20415–0001, (202) 606–1000.

SUPPLEMENTARY INFORMATION: The Council is holding meetings outside the Washington, DC Metropolitan area in an effort to get the labor-management partnership message out to as many people as possible. This will be an interactive meeting. There will be presentations on partnership experiences followed by an audience participation segment. Persons seated in the audience will be invited to ask questions from the floor. The meeting will end with a discussion of various Council workplan items.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Mr. Douglas K. Walker at the address shown above. Written comments must be received by September 8, in order to be considered at the September 12, meeting.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95–20645 Filed 8–21–95; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Agricultural Policy Advisory Committee for Trade and Agricultural Technical Advisory Committees for Trade Meetings

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Agricultural Policy Advisory Committee for Trade (APAC) and the Agricultural Technical Advisory Committees for Trade (ATACs) will hold meetings during the period of August 21, 1995–February 1, 1996. The meetings will include a review and discussion of current issues which influence U.S. agricultural trade policy that include, but are not limited to, issues concerning Chile NAFTA accession negotiations; GATT accession negotiations with various countries; U.S./Canada bilateral agricultural trade issues; international sanitary and phytosanitary barriers to trade; GATT Uruguay Round Agreement implementation issues; the Long-term Agricultural Trade Strategy of the U.S. Department of Agriculture; Asia-Pacific Economic Cooperation; and the Free Trade Agreement of the Americas initiative.

Pursuant to section 2155 (f) (2) of title 19 of the United States Code, the U.S.

Trade Representative has determined that these meetings will be concerned solely with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy priorities, negotiating objectives, or bargaining positions. Accordingly, these meetings will be closed to the public.

Briefings regarding non-sensitive issues may be held in conjunction with these meetings. Such briefings will be open to the public. Information regarding the dates and times of such briefings can be obtained by contacting John B. Winski, Joint Executive Secretary, Agricultural Policy Advisory committee for Trade, Foreign Agricultural Service, U.S. Department of Agriculture, at (202) 720–6829.

ADDRESSES: All meetings will be held at the U.S. Department of Agriculture, 14th and Independence Avenues, SW., Washington, DC 20250 unless an alternate site is necessary.

FOR FURTHER INFORMATION CONTACT: Clayton Parker, Director of Intergovernmental Affairs, Office of the United States Trade Representative at (202) 395–6120 or John B. Winski, Joint Executive Secretary, Agricultural Policy Committee for Trade, Foreign Agricultural Service, U.S. Department of Agriculture, at (202) 720–6829.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–20783 Filed 8–21–95; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by the Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell (202) 942–8800.

Upon Written Request, Copy available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Revised Proposed Rule and Proposed Form: Rule 3a–4 and Form N–3a4, File No. 270–401.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, the Securities and Exchange Commission (the ''Commission'') has submitted for OMB approval revised proposed rule 3a–4 and proposed Form N–3a4, both under the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, (the ''Investment Company Act'').

Revised proposed rule 3a–4 would provide a nonexclusive safe harbor from the definition of investment company for certain investment advisory programs meeting the conditions of the rule. The revised proposed rule would require sponsors of investment advisory programs relying on the safe harbor, among other things, to establish and effect written procedures and agreements, and to provide each client with quarterly statements. The Commission estimates that the annual reporting burden for revised proposed rule 3a–4 would be 1,168,720 hours.

Proposed Form N–3a4 would be filed by sponsors intending to rely on rule 3a–4. The form would be filed when a sponsor begins or ends its reliance on the safe harbor, or when the sponsor wishes to amend the prior filing. The annual reporting burden would be 4.5 hours.

Direct general comments to the Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and Clearance Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Paperwork Reduction Project (Rule 3a–4 and Form N–3a4), Office of Management and Budget, room 3228, New Executive Office Building, Washington, DC 20543.

Dated: August 3, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–20696 Filed 8–21–95; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell (202) 942–8800.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Proposed Revisions

Regulation S–X—File No. 270–3
Regulation S–B—File No. 270–370
Form S–1—File No. 270–58
Form S–2—File No. 270–60
Form S–3—File No. 270–61
Form S–4—File No. 270–287
Form F–1—File No. 270–249
Form F–2—File No. 270–250
Form F–3—File No. 270–251
Form F–4—File No. 270–288
Form SB–1—File No. 270–374
Form SB–2—File No. 270–366
Form 10—File No. 270–51
Form 20–F—File No. 270–156
Form 10–K—File No. 270–48
Form 10–KSB—File No. 270–368
Form 10–Q—File No. 270–49
Form 10–QSB—File No. 270–369

Proposed Rule: Proposed Rule 135d, File No. 270–403.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted requests for approval of proposed rule revisions and a new proposed rule for the following:

Regulation S–X prescribes the form and content of an requirements for financial statements that are included in registration statements, annual and other reports, certain proxy information statements, and other documents. Regulation S–X is assigned two burden hours for administrative convenience, since the regulation simply prescribes the disclosure that must appear in other filings under the securities laws.

Regulation S–B provides an integrated disclosure system for small business issuers. Regulation S–B is assigned one burden hour for administrative convenience, since the regulation simply prescribes the disclosure that must appear in other filings under the securities laws.

Form S–1 is the general registration form used by issuers that are not eligible to use any of the specified forms to register securities. It is estimated that approximately 1,249 respondents will spend 1,551,258 burden hours annually to comply with Form S–1.

Form S–2 is used by certain issuers to register securities pursuant to the federal securities laws. It is estimated that approximately 344 respondents will spend 162,368 burden hours annually to comply with Form S–2.

Form S–3 is a registration statement which permits certain information to be incorporated by reference pursuant to the federal securities laws. It is estimated that approximately 2,290 respondents will spend 911,420 burden hours annually to comply with Form S–3.

Form S–4 is the registration form for securities issued in business combination transactions. It is estimated that approximately 505 respondents will spend 624,685 burden hours annually to comply with Form S–4.

Form F–1 is used by foreign issuers to register securities pursuant to federal securities laws. It is estimated that approximately 15 respondents will spend 28,050 burden hours annually to comply with Form F–1.

Form F–2 is used by foreign private issuers to register securities pursuant to the federal securities laws. It is estimated that approximately 4 respondents will spend 2,240 burden hours annually to comply with Form F–2.

Form F–3 is used by foreign private issuers to register securities pursuant to the federal securities laws. It is estimated that approximately 6 respondents will spend 990 burden hours annually to comply with Form F–3.

Form F–4 is used by foreign private issuers to register securities issues in connection with business combinations pursuant to federal securities laws. It is estimated that approximately 2 respondents will spend 2,622 burden hours annually to comply with Form F–4.

Form SB–1 is used by small business issuers to register securities pursuant to the federal securities laws. It is estimated that approximately 260 respondents will spend 184,600 burden hours annually to comply with Form SB–1.

Form SB–2 is an optional registration form used by small business issuers. It is estimated that approximately 269 respondents will spend 236,182 burden hours annually to comply with Form SB–2.

Form 10 is an Exchange Act registration form that provides material information about the issuer necessary for investors to make an informed investment decision. It is estimated that approximately 110 respondents will spend 10,340 burden hours annually to comply with Form 10.

Form 20–F elicits material information concerning the financial condition and operations of foreign private issuers in order to permit investors to make informed investment decisions. It is estimated that approximately 133 respondents will spend 264,670 burden hours annually to comply with Form 20–F.

Form 10–K elicits material information concerning the financial condition and business operations for each fiscal year for issuers of publicly-traded securities. It is estimated that approximately 6,261 respondents will spend 10,634,308.50 burden hours annually to comply with Form 10–K.

Form 10–KSB elicits material information concerning the financial condition and business operations for each fiscal year for small business issuers of publicly-traded securities. It is estimated that approximately 3,275 respondents will spend 4,021,700 burden hours annually to comply with Form 10–KSB.

Form 10–Q elicits information concerning the financial condition and business operations for issuers of publicly traded securities after the end of the first, second, and third fiscal quarters. It is estimated that approximately 6,282 respondents will spend 3,703,239 burden hours annually to comply with Form 10–Q.

Form 10–QSB is an optional form for quarterly transitional reports of small business issuers under Sections 13 and 15(d) of the Securities Exchange Act of 1934. It is estimated that approximately 3,516 respondents will spend 1,450,350 burden hours annually to comply with Form 10–QSB.

Proposed Rule 135d is a solicitation of Interest document which will permit issuers to solicit interest in their companies prior to the filing of a registration statement. It is estimated that approximately 30 respondents will spend 30 burden hours annually to comply with Rule 135d.

General comments regarding the estimated burden hours should be directed to the OMB Clearance Officer at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Clearance Officer, Project Numbers: 3235–0009 (Reg S–X), 3235–0417 (Reg S–B), 3235–0065 (Form S–1), 3235–0072 (Form S–2), 3235–0073 (Form S–3), 3235–0324 (Form S–4), 3235–0258 (Form F–1), 3235–0257 (Form F–2), 3235–0256 (Form F–3), 3235–0325 (Form F–4), 3235–0423 (Form SB–1), 3235–0418 (Form SB–2), 3235–0064 (Form 10), 3235–0288 (Form 20–F), 3235–0063 (Form 10–K), 3235–0420 (Form 10–KSB), 3235–0070 (Form 10–Q), 3235–0416 (Form 10–QSB) and 3235-new (Proposed Rule 135d), Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 18, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–20695 Filed 8–21–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36102; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Approving Amendment No. 3 to Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago and Philadelphia Stock Exchanges

August 14, 1995.

On August 10, 1995, the National Association of Securities Dealers, Inc., and the Boston, Chicago, and Philadelphia Stock Exchanges (collectively, ''Participants'') [1] submitted to the Commission proposed Amendment No. 3 to a joint transaction reporting plan (''Plan'') for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.[2] The Commission is approving the proposed amendment to the Plan and trading pursuant to the Plan on a temporary basis to expire on September 12, 1995. The Commission also is expanding the number of eligible securities that may be traded by an exchange Participant pursuant to the Plan from 100 to 500 Nasdaq/National Market securities.

[1] The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. (''NASD''), and the Chicago Stock Exchange, Inc. (''Chx'') (previously, the Midwest Stock Exchange, Inc.), Philadelphia Stock Exchange, Inc. (''Phlx''), and the Boston Stock Exchange, Inc. (''BSE''), are the ''Participants.'' The BSE, however, joined the Plan as a ''Limited Participant,'' and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as ''Nasdaq/NMS'') securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

[2] The Commission notes that Section 12(f) of the Act describes the circumstances under which an exchange may trade a security that is not listed on the exchange, *i.e.*, by extending unlisted trading privileges (''UTP'') to the security. Section 12(f) was amended on October 22, 1994, 15 U.S.C. 78*l* (1991) (as amended 1994). Prior to the amendment, section 12(f) required exchanges to apply to the Commission before extending UTP to any security. In order to approve an exchange UTP application for a registered security not listed on any exchange (''OTC/UTP''), Section 12(f) required the Commission to determine that various criteria had been met concerning fair and orderly markets, the protection of investors, and certain national market initiatives. These requirements operated in conjunction with the Plan currently under review. The recent amendment to Section 12(f), among other matters, removes the application requirement and permits OTC/UTP only pursuant to a Commission order or rule. The order or rule is to be issued or promulgated under essentially the same standards that previously applied to Commission review of UTP applications. The present order fulfills these Section 12(f) requirements.

I. Extension of the Pilot Program

The Commission originally approved the Plan on June 26, 1990.[3] The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant UTP. The Commission originally approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. Consequently, the pilot period commenced on July 12, 1993. As requested by the Participants in Amendment Nos. 1 and 2 to the Plan, the Commission has extended the effectiveness of the Plan twice. Accordingly, the effectiveness of the Plan was scheduled to expire on August 12, 1995.[4]

As originally approved by the Commission, the Plan required the Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. The January 1995 Extension Order approved the effectiveness of the Plan through August 12, 1995, but also stated that the Commission expected the Participants to conclude their financial negotiations before January 31, 1995.[5] To date, the Participants have not completed their financial negotiations.

Proposed Amendment No. 3 to the Plan would extend the effectiveness and the negotiation period for an additional month through September 12, 1995. The Commission believes it is appropriate to extend the effectiveness of the pilot program for an additional month in order to continue the pilot program in place while the Commission awaits the Participants' filing of a proposed Plan amendment concerning revenue sharing pursuant to the Plan. The Commission also is directing the Participants to submit the filing to the Commission on or before August 31, 1995.

II. Extension of Certain Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on August 12, 1995, the Commission granted an exemption from Rule 11Ac1–2 under the Act regarding the calculated best bid and offer (''BBO''), and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. At the request of the Participants, this order extends these exemptions through September 12, 1995, provided that the Plan continues in effect through that date pursuant to a Commission order.[6] The Commission continues to believe that exemptive relief from these provisions is appropriate through September 12, 1995, but at that time, the Commission will review the exemptive relief in light of any comments received.

III. Expansion of the Number of Eligible Securities

In our 1994 and January 1995 Extension Orders, the Commission noted several unresolved issues concerning the Plan. These issues include, among other matters, whether the Commission should continue to limit the number of OTC securities that may be traded on exchanges pursuant to UTP. Currently, exchanges may extend UTP up to a maximum of 100 securities.[7]

Prior to the Commission's January 1995 Extension Order, the Commission received a letter from the Chx requesting that the Commission expand the number of eligible securities from 100 to 500.[8] In the January 1995 Extension Order, the Commission solicited comment specifically on whether it would be appropriate to permit exchanges to extend UTP to a maximum of 500 OTC securities for an interim period, and whether all NMS securities[9] should be available for extensions of UTP if the Commission determines that permanent approval of the Plan is appropriate.

Thereafter, the Commission received three comment letters on the 100-security limitation, two in favor of expanding the number of eligible securities,[10] and one opposed to the expansion.[11] One commenter favored the expansion of securities available for exchange trading because the commenter believes the new automated capabilities developed by the exchanges will add liquidity and depth to the markets.[12] Another commenter, one of the two specialist firms currently trading under the Joint OTC/UTP Plan, supports expanding the number of eligible securities to 500 because the expansion would enhance the firm's ability to market its services, thereby allowing the exchanges to be more competitive with the larger OTC wholesale dealers.[13]

The commenter opposed to the expansion believes that, viewed in isolation, the proposed expansion would be consistent with the Act.[14] The commenter believes, however, that the expansion would be inconsistent with elements of Section 11A(a)(1)(C) of the Act concerning competition[15] because of the continued existence of exchange off-board trading restrictions, limitations on the eligibility of securities to be traded in the Intermarket Trading System, and New York Stock Exchange delisting rules, all of which

[3] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (''1990 Approval Order''). For a detailed discussion of history of UTP in OTC securities, and the events that led to the present plan and pilot program, *see* 1994 Extension Order, *infra* note 4.

[4] *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (''1994 Extension Order''). *See also* Securities Exchange Act Release No. 35221, (January 11, 1995), 60 FR 3886 (''January 1995 Extension Order'').

[5] *See* January 1995 Extension Order, *id*, at n. 6.

[6] In the January 1995 Extension order, the Commission extended these exemptions from July 12, 1995, through August 12, 1995. Pursuant to a request made by letter attached to the present filing, this order further extends the effectiveness of the relevant exemptions from August 12, 1995, through September 12, 1995. *See* letter from Robert E. Abner, NASD, to Jonathan Katz, Commission, dated August 10, 1995.

[7] Prior to 1985, the Commission generally did not permit exchanges to extend UTP to OTC securities. In 1985, the Commission determined that it would be appropriate to permit exchanges, on a temporary basis and subject to certain limitations, to extend UTP up to a maximum of 25 OTC securities. These limitations included the requirement that the NASD and exchanges seeking to extend UTP to OTC securities enter into a plan for consolidated transaction and quotation dissemination. *See* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640. In 1986, the Midwest Stock Exchange (currently the Chicago Stock Exchange, or ''Chx'') entered into an interim plan which subsequently was superseded by the Plan currently operating on a pilot basis. In 1990, the Commission expanded the maximum number of eligible securities to 100. *See* 1990 Approval Order, *supra* note 3.

[8] *See* letter from George T. Simon, Foley & Lardner, to Katherine England, Assistant Director, Commission, dated January 9, 1995. This letter also concludes that, when the Plan is finally approved, all NMS stocks would be eligible for trading.

[9] National market system, or ''NMS,'' securities are defined in Rule 11Aa2–1 under the Act.

[10] *See* letter from William A. Lupien, Chairman, Mitchum, Jones & Templeton, Inc., to Secretary, Commission, dated February 21, 1995 (''Mitchum, Jones & Templeton letter''), and letter from Jack A. Dempsey, Senior Vice President, Dempsey & Company, to Mr. Jonathan G. Katz, Secretary, Commission, dated February 21, 1995 (''Dempsey letter'').

[11] *See* letter from Richard G. Ketchum, Executive Vice President & Chief Operating Officer, NASD, to Mr. Jonathan G. Katz, Secretary, Commission, dated February 21, 1995 (''NASD letter''). The NASD letter was submitted to the Commission with an attached statistical report to the Commission that provides data concerning exchange and NASD volume in OTC/UTP, and certain quotation information for securities that are quoted pursuant to the Plan.

[12] *See* Mitchum, Jones & Templeton letter, *supra* note 9.

[13] *See* Dempsey letter, *supra* note 9.

[14] *See* NASD letter, *supra* note 10.

[15] Section 11A(a)(1)(C) requires the Commission, among other matters, to promote fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

the commenter believes to be anti-competitive.

While the Commission does not necessarily find any of the above comments on this topic persuasive, the Commission believes that it is appropriate at this time to expand the number of Nasdaq/National Market securities an exchange Participant may trade. The Commission has not received evidence that expanding the number of securities would have a negative effect on the markets or the protection of investors. Due to the lack of comments concerning the previous effects of OTC/UTP trading on the quality of the affected markets and on investors, the Commission believes this limited expansion from 100 to 500 Nasdaq/National market securities provides a prudent approach that will enable the Participants and the Commission to gain useful, instructive experience concerning operation of the Joint OTC/UTP Plan and on its competitive effects.

IV. Outstanding Concerns

In the January 1995 Extension Order, the Commission also solicited comment on: (1) Whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule.

The Commission received two comments in support of including size in the BBO calculation.[16] These commenters explain that, without including size in the BBO calculation, the BBO does not provide an accurate representation of the depth of the BBO.

The Commission requests further comment on the question of whether size should be included in the BBO. The Commission notes that the comments raised address more whether all inside bid and offer size should be aggregated, thereby displaying the true depth of the bid and offer, than whether size should be included in the BBO calculation. It is not clear whether the commenters actually recommend that aggregation of BBO size as the appropriate result, as compared to inclusion of size in the BBO calculation. For this reason, the Commission continues to solicit comment on whether the BBO calculation should include size, and why the greater size bid (offer) or the first-in-time bid (offer) should be displayed as best.

[16] *See* Mitchum, Jones & Templeton letter and Dempsey letter, *supra* note 9.

The Commission received one comment on the need for an intermarket linkage for order routing and execution and an accompanying trade-through rule.[17] The commenter believes that a linkage similar to that of the Intermarket Trading System would greatly enhance the effectiveness of the OTC/UTP program, and would give exchanges a great chance at improving the UTP marketplace for all investors. The Commission continues to solicit comment on the need for such a linkage, and also on whether any existing electronic trading system or systems, which may include those currently sponsored by one or more of the Participants to the Plan, could be used to gain the same or similar benefits for investors.

V. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by September 12, 1995.

VI. Conclusion

The Commission finds that proposed Amendment No. 3 to the Plan to extend the financial negotiation period for an additional month is appropriate and in furtherance of Section 11A of the Act. The Commission finds further that extensions of the exemptive relief requested through September 12, 1995, as described above, also is consistent with the Act and the Rules thereunder. The Commission also finds that it is consistent with Section 11A of the Act to expand the number of Nasdaq/National Market securities that each exchange participant may trade from 100 to 500 securities. Specifically, the Commission believes that these extensions and the expansions should serve to provide the Participants with more time to conclude their financial negotiations and with more information to evaluate the effects of and proposed course of action for the pilot program. This, in turn, should further the objects of the Act in general, and specifically those set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule 11Aa3–2 thereunder, that Amendment No. 3 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby approved, and trading pursuant to the Plan is hereby approved on a temporary basis through September 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–20698 Filed 8–21–95; 8:45 am]

BILLING CODE 8010–01–M

[17] *See* Dempsey letter, *supra* note 9. The Commission notes that the Dempsey letter also comments on the practice of internalization. The Commission did not solicit comment on internalization with respect to the Plan, and the Commission believes that internalization is not under review in the present notice and order. That topic, therefore, is not included in the present analysis.

[Release No. 34–36100; File No. SR–BSE–95–02, Amendment No. 1]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to its Competing Specialist Initiative

August 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 10, 1995, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and II below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] On February 6, 1995, the BSE filed the proposed rule change being amended herein. It was subsequently published for comment in Securities Exchange Act Release No. 35404 (February 22, 1995), 60 FR 10882 (February 28, 1995).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE seeks to clarify the priority rule as it pertains to its Competing Specialist Initiative. The language of the proposed rule change is as follows where deletions are [bracketed] and additions are *italicized*:

Because there is only one Exchange market in a security subject to competition, all limit [Limit] orders *sent to the Exchange will be maintained by the BEACON System's central limit book and will be* [entrusted to each competing specialist are to be represented and] executed strictly according to time priority as to receipt of the order in the BEACON System, *irrespective of firm order routing procedures.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed amendment is to clarify the priority rule regarding the execution of limit orders on the central limit order book in securities subject to competition, which provides that limit orders will be executed in the same order in which they are received by the BEACON System, *i.e.*, according to strict time priority.

2. Statutory Basis

The BSE believes that the statutory basis for this proposal is Section 6(b)(5) of the Act in that it furthers the objectives to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–95–02, Amendment No. 1 and should be submitted by September 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–20697 Filed 8–21–95; 8:45 am]

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[Release No. 34–36097; File No. SR–NSCC–95–09]

Self-Regulatory Organization; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Modifications to its Procedures to Allow the Processing of Voluntary Reorganizations With Protect Periods of Three Days or Greater

August 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 27, 1995, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change consists of modifications to NSCC's Procedures to allow the processing of voluntary reorganizations with protect periods of three days or greater.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] These statements have been modified by the Commission.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC recently modified its Rules and Procedures to accommodate three-day (''T+3'') settlement of securities transactions. NSCC did not modify its Procedures for voluntary reorganizations (*i.e.*, tender or exchange offers) which currently require a protect period [3] of five days or greater because the industry indicated to NSCC that five day protect periods would prevail for a substantial period of time after the implementation of T+3. However, with the implementation of T+3, some voluntary reorganizations have had protect periods of three days rather than five days. In response, NSCC has suspended references in its Procedures to the five day protect period in order to accommodate voluntary reorganizations with three day protect periods. Accordingly, the purpose of the proposed rule change is to modify Section VII.H.4(b) of NSCC's Procedures to allow the processing of voluntary reorganizations with protect periods of three days or greater through NSCC's Continuous Net Settlement System.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it should facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–95–09 and should be submitted by September 12, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–20694 Filed 8–21–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36108; File No. SR–Phlx–95–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by Philadelphia Stock Exchange, Inc. Relating to Fingerprinting Requirements

August 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] notice is hereby given that on July 3, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On July 25, 1995, the Exchange filed Amendment No. 1 to request that its minor rule violation plan be amended to incorporate the rule proposed herein. [2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act,[3] proposes to adopt Phlx Rule 623, Fingerprinting, as well as a corresponding Floor Procedure Advice (''Advice'') F–25, Fingerprinting Floor Personnel. Specifically, Phlx Rule 623 would require member organizations to comply with Section 17(f)(2) of the Act. [4] In addition, applicants for membership also must be fingerprinted, as part of the Phlx's membership application process. The Rule would further require member organizations to submit fingerprints to the Exchange for processing. The text of the proposed rule change is available for inspection at the locations specified in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to incorporate the requirements of Section 17(f)(2) of the Act, [5] and Rule 17f–2 [6] thereunder into the Phlx's rules. The Exchange believes that including the Commission's fingerprinting

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[3] A protect period is generally understood to mean the amount of time after the expiration of a tender or exchange offer that the owner or record holder who has elected to participate in the offer has to submit the shares to the tender agent to cover his or her position.

[1] 15 U.S.C. 78s(b)(1).

[2] See letter from Gerald O'Connell, First Vice President, Phlx, to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated July 24, 1995.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78q(f)(2).

[5] *Id.*

[6] 17 CFR 240.17f–2.

requirement in the Phlx's rules should facilitate compliance by providing Exchange members with ready reference to the requirement and deter future violations.

Proposed Phlx Rule 623 appears in the registration rules [7] and would require all Exchange members and clerks to be fingerprinted, pursuant to Rule 17f–2.[8] Because Commission provisions spell out who must be fingerprinted as well as the exemptions from this requirement, the Exchange did not recopy those provisions into its rules. Instead, the proposed Exchange rule serves as a reminder and provides a citation to the detailed requirement. The Exchange notes that its proposal is similar to the rules of other exchanges.[9]

Phlx Rule 623 also would expressly apply to applicants for Exchange membership. Because the Commission requires an employee to be fingerprinted prior to commencing the duties requiring fingerprinting, fingerprinting usually occurs at the application stage. Therefore, potential Phlx members are currently fingerprinted as part of the application process. Specifically, once an applicant has filed an application with the Exchange's Office of the Secretary pursuant to Phlx By-Law Article XII, Section 12–4, clearance procedures are conducted to verify personal data and financial viability. Fingerprints are taken by the Exchange's Security Department, which processes them for submission to the Federal Bureau of Investigations (''FBI''); returned fingerprint reports are forwarded to the member organizations for record retention in accordance with Rule 17f–2(d).[10]

Generally, Phlx Rules 900–942 govern membership and admission to membership; Phlx Regulation 2 (Order and Decorum Regulations administered pursuant to Phlx Rule 60) governs access to the trading floor by applicants. Pursuant to proposed Phlx Rule 623, the member organization is responsible for ensuring that the fingerprinting requirement is met prior to the applicant or employee performing the functions listed in Rule 17f–2.[11] Thus, in lieu of citing applicants themselves, the member organization sponsoring the applicant for membership would be cited for violations for the proposed requirement.

Additionally, the fingerprint requirement also would be incorporated as a Floor Procedure Advice, such that a minor rule plan citation could be issued.[12] For example, if, during the course of an examination,[13] staff discovers that an Exchange member or non-exempt employee had not been fingerprinted, a citation could be immediately issued. The issuance of a citation should alleviate situations where fingerprint maintenance is a recurring problem, because violations by a member or participant organization would result in escalating fines, and, eventually, disciplinary action by the Exchange's Business Conduct Committee (''BCC''). The Exchange believes this type of violation is appropriate for the minor rule plan because it is objective and, thus, violations are readily subject to verification.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [14] in general, and in particular, with Section 6(b)(5),[15] in that it is designed to protect investors and the public interest by facilitating compliance with Commission fingerprinting requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Philadelphia Stock Exchange. All submissions should refer to File No. SR-Phlx–95–49 and should be submitted by September 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–20771 Filed 8–21–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21282; 812–9572; International Series Release No. 839]

CITIC Pacific Limited; Notice of Application

August 15, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: CITIC Pacific Limited.

[7] See, *e.g.*, Phlx Rule 600, Addresses of Members, and Phlx Rule 604, Registration and Termination of Registered Representatives.

[8] 17 CFR 240.17f–2.

[9] See, *e.g.*, New York Stock Exchange Rule 35, Supplementary Material .60.

[10] 17 CFR 240.17f–2(d).

[11] 17 CFR 240.17f–2.

[12] The Phlx's minor rule violation enforcement and reporting plan (''minor rule plan''), codified in Phlx Rule 970, contains floor procedure advice with accompanying fine schedules. Rule 19d–1(c)(2), 17 CFR 240.19d–1(c)(2), authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d–1(c)(1), 17 CFR 240.19d–1(c)(1), requires prompt filing with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate reporting.

[13] The Exchange reviews for compliance with Rule 17f–2, 17 CFR 240.17f–2, during the course of examinations of both member and participant organizations.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 200.30–3(a)(12).

RELEVANT ACT SECTION: Order requested under section 3(b)(2) of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

FILING DATES: The application was filed on April 14, 1995, and amended on July 31, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 11, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Level 35, Two Pacific Place, 88 Queensway, Hong Kong.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney, at (202) 942–0579, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is incorporated in Hong Kong and its shares are listed on the Hong Kong Stock Exchange. As of December 31, 1994, applicant had market capitalization of approximately US$4.8 billion, making it the fourteenth largest company listed on the Hong Kong Stock Exchange.

2. Applicant's largest shareholder is China International Trust & Investment Corporation Hong Kong (Holdings) Limited (''CITIC HK''), which indirectly owns approximately 43% of applicant's shares. CITIC HK is wholly-owned by China International Trust & Investment Corporation (''CITIC''), a state-owned enterprise in the People's Republic of China (''PRC''), which is one of the primary investment vehicles of the PRC government. CITIC is a ministry-level organization under the direct oversight of the State Council of the PRC.

3. Applicant came into its current configuration in March, 1990 when CITIC HK bought 49% of applicant's (then named Tyfull Company Limited) shares. In August 1991, Tyfull Company Limited changed its name to CITIC Pacific Limited. CITIC HK plays an influential role in the management and policies of applicant through a management contract and a number of common directors and senior officers.

4. Applicant's long-term objective is to develop as a large diversified business with an emphasis on trade and infrastructure projects similar to the traditional diversified companies based in Hong Kong known as ''hongs.'' Applicant's principal operations are in Hong Kong, Macau, and Mainland China. Applicant is treated as a foreign entity for purposes of most Chinese regulatory schemes and is subject to restrictions on foreign investment and private ownership in certain sectors.

5. Applicant's consolidated total assets increased from HK$1,525 million as of December 31, 1990 to HK$34,240 million as of December 31, 1994 (on the basis of audited accounts).[1] Applicant's growth has occurred primarily through the acquisition of new businesses financed in large part by the issuance of new shares. Applicant has been actively involved in the business affairs of its affiliated companies and has made significant contributions to these companies at both an operational and strategic level.

6. Applicant conducts its diversified business operations either directly or through wholly-owned or majority-owned subsidiaries. Applicant, through wholly-owned subsidiaries, owns 100% of the shares of Dah Chong Hong, one of the largest Hong Kong based traders and distributors. Dah Chong Hong has substantial operations in Hong Kong and Mainland China and business in Japan, Canada, and Singapore. Dah Chong Hong's business includes distribution and servicing of vehicles, and import and distribution of numerous items, including a wide range of foods, building materials, electric appliances, and audio-visual equipment. Applicant nominates the board of directors of Dah Chong Hong and is actively involved in all major decisions regarding its business.

7. Applicant owns majority interests in Jiangsu Ligang Electric Power (Jiangsu Province) and Zhengzhou Xinli Electric Power (Henan Province). Each of these entities is a Chinese joint venture company established to construct and operate a power station. The partners in these projects are Chinese government-owned entities. Under the relevant joint venture agreements, applicant has primary responsibility for the design and construction of these power stations, and for their operation and maintenance as well as financing. In addition, applicant recently has acquired a 50% interest in a power plant project in Kai Feng, Henan Province, China.

8. Applicant has a 55% controlling interest in four large manufacturing operations in Mainland China that focus generally upon items related to infrastructure development, including steel, telephone wires and cables, stainless steel pipe, and small and medium range motors.

9. Applicant has 50% interests in two major real estate development projects in Hong Kong. Applicant acts as co-developer and plays an active role in these projects, which include shopping and office space, and residential, hotel, and school facilities.

10. Applicant has majority interests in several tunnel development projects and completed tunnel and bridge operating companies. Applicant controls a 50% interest in Western Harbour Tunnel Company Limited (''WHTCL''), the leader of the consortium that will build the Western Harbour Crossing in Hong Kong. An executive director of applicant currently serves as chairman of the board of WHTCL and two other officers of applicant also serve on the board. Applicant also owns a 50% interest in Shanghai CITIC Tunnel Development Co. Ltd., a joint venture with Shanghai Huangpu River Tunnel Construction Co. Applicant provides advanced management skills to this project, and is an active participant in all stages of the project, including design and planning, construction, operation and maintenance.

11. In addition, applicant, through a wholly-owned subsidiary, is a 45% joint venture participant in Shanghai Huang Pu River Tunnel and Bridges Development Company Ltd. (''Huang Pu Tunnel & Bridges''), which was granted a 20-year franchise commencing January 1, 1995, for the operation, management, and maintenance of a tunnel and two bridges in Shanghai, China. The other 55% interest in the joint venture company is owned by two PRC companies connected to the Shanghai government. Applicant has contractual rights to participate in control of the joint venture and appoints three of the seven members of the board of directors. These directors actively are engaged in

[1] As of the date of the application, there were approximately HK$7.73 to each US$1.

the management and development of Huang Pu Tunnel & Bridges.

12. Applicant also holds a number of its businesses in the form of strategic alliances through shareholdings in companies in which applicant holds less than 50% of the equity share capital, many of which are controlled companies within the meaning of section 2(a)(9) of the Act. Applicant is the largest single shareholder of Dragonair, a major regional airline that serves 14 cities in Mainland China and 6 other cities in Asia from its base in Hong Kong. Applicant, directly and indirectly, owns 46.2% of Dragonair's voting securities and has an economic interest in an additional 3.75%, for a total economic interest of 49.95% Applicant has a controlling influence over the company's management through its control of five of eleven seats on the board of directors of Dragonair, and has played a key role in negotiating and obtaining new routes in Mainland China for Dragonair. Dragonair's operations are subject to air transport service agreements between the United Kingdom and other countries that effectively prohibit any non-British company from owning and controlling a 50% or greater interest in an airline company in Hong Kong. This restriction is expected to change once Hong Kong reverts to Chinese sovereignty in 1997.

Applicant's Legal Analysis

1. Applicant would like to offer its securities (or depository receipts representing securities) in the United States, in private placements, offerings to qualified institutional buyers, or possibly a public offering. Applicant seeks an order to clarify that it will not be subject to regulation as an investment company in the United States.

2. Under section 3(a)(3), an issuer is an investment company if it ''is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.'' Section 3(a) defines ''investment securities'' to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies.

3. Applicant states that it is engaged primarily in the business of trade and infrastructure development through active participation in all of its majority-owned subsidiaries and controlled companies and is not in the business of investing, reinvesting, or trading in securities. Although applicant owns investment securities within the meaning of section 3(a)(3) of the Act, and these investment securities exceed 40 percent of the value of its total assets on an unconsolidated basis, applicant currently is eligible to rely on rule 3a–1 to exempt it from the definition of investment company. Applicant is concerned, however, that a small change in asset values could deprive applicant of the protection of rule 3a–1.

4. Rule 3a–1 provides a safe harbor for an issuer that derives no more than 45% of the value of its total assets (excluding government securities and cash items), and no more than 45% of its net income after taxes, from securities other than government securities, securities issued by employees' securities companies, securities issued by majority-owned subsidiaries of the issuer which are not investment companies, and securities issued by the companies which are controlled primarily by such issuer and (a) through which the issuer engages in a business other than that of investing, reinvesting, owning, holding or trading in securities, and (b) which are not investment companies. As of December 31, 1994, approximately 43.77% of applicant's total assets were composed of interests in non-investment company businesses where applicant held 25% or less of the business or where applicant held more than 25% of the business, but another shareholder held a larger control position (thus putting in question whether applicant has the ''primary control'' required by rule 3a–1). These assets accounted for approximately 32.21% of applicant's total investment income (on a dividend basis) for the four fiscal quarters concluded December 31, 1994.

5. Section 3(b)(1) of the Act provides that notwithstanding section 3(a)(3), any issuer engaged primarily, directly or through a wholly-owned subsidiary or subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities, in not an investment company. Applicant does not fall within this exception because not of its businesses are conducted, not directly or through wholly-owned subsidiaries, but through majority-owned subsidiaries, controlled companies, and other companies.

6. Section 3(b)(2) provides that notwithstanding section 3(a)(3), the Commission may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or through controlled companies conducting similar types of businesses. To clarify its status under the Act, applicant requests an order exempting it from regulation as an investment company under section 3(b)(2).

7. In determining whether a company is ''primarily engaged'' in a non-investment company business under section 3(b)(2), the Commission considers the following factors: (a) The company's historical development; (b) its public representations of policy; (c) the activity of its officers and directors; (d) the nature of its present assets, and (e) the sources of its present income.[2]

8. Applicant states that it was not established, nor has it developed, as an investment company. At the time of the acquisition of applicant buy CITIC HK in 1990, applicant was a small company, listed on the Hong Kong Stock Exchange, having relatively few assets. Since that time, its has grown to become a diversified company, on the model of the traditional Chinese ''hongs,'' principally by acquisitions of business interests from its largest shareholder, CITIC HK. It is now actively engaged in trade and distribution, consumer credit, aviation, real estate, telecommunications, tunnels and transportation-related facilities, power generation, manufacturing, and environmental projects. Applicant's strategy has been to enter a new line of business by taking a minority position in a consortium led by an experienced industry leader, then, once its has gained sufficient expertise, to assume a controlling or majority position. Applicant asserts than many of its holdings in China are less than majority-owned because of the government limitations on ownership by foreign investors. In addition, the holding structure of applicant's businesses in Hong Kong and Macau also have been largely shaped by local regulatory and business factors. Applicant states that it maintains long-term, substantial positions in even its minority-held companies, and has not looked to asset sales as an important source of revenue.

9. Applicant has never held itself out as an investment company within the meaning of the Act, and has never been a registered investment company (or subject to any analogous regulatory scheme in another jurisdiction). Applicant has consistently held itself out to its shareholders and the public as a company actively engaged in the businesses of trade, distribution,

[2] *Tonapah Mining Company of Nevada,* 26 S.E.C. 426, 427 (1947).

consumer credit, aviation, telecommunications, power generation, environment, roads and tunnels, industrial manufacturing, and real property. In various circulars issued to shareholders, applicant has stated that it expects growth in earnings from its operating businesses.

10. Applicant's principal officers and directors are actively engaged in the management and development of applicant's businesses. In many of these companies, applicant's officers play a leading role in management's strategic decision making or in other essential operational functions, such as identifying expansion opportunities or leading financing efforts. Applicant's top officers have extensive backgrounds in banking, shipping, heavy industry, power generation, property development, law, government, accounting, and finance. None of applicant's principal officers has experience as an investment manager or adviser, and none of them holds himself out as an expert in these areas. No principal officer of applicant devotes any of his time to investment management, apart from cash management. Applicant estimates that approximately 80% of management's time is devoted to considering issues related to operating its various businesses, and the remainder of management's time is devoted to the pursuit of new business opportunities, maintaining relations with joint venture and consortium partners, obtaining financing, and administrative matters.

11. As of December 31, 1994, applicant's majority-owned subsidiaries [3] accounted for 44.46% of applicant's assets for the prior 12 months. As of December 31, 1994, Dragonair, a company controlled by applicant,[4] accounted for 6.91% of applicant's assets.

12. Applicant also presumptively controls companies other than Dragonair that are involved in the development of core infrastructure. Applicant asserts that it need not establish that such companies and Dragonair conduct ''similar types of business'' within the meaning of section 3(b)(2) in order to obtain exemptive relief, however. Section 3(b)(2) requires similarity of businesses only among those controlled companies which must be added to arrive at a determination of the primary business engagement of the controlling company.[5] In applicant's case, only Dragonair need be added to applicant's majority-owned subsidiaries to demonstrate that applicant is primarily engaged in trade and infrastructure (aviation) businesses through majority-owned subsidiaries and controlled companies.

13. Accordingly, 51.37% of applicant's assets as of December 31, 1994, valued in accordance with section 2(a)(41) of the Act, were comprised of its majority-owned subsidiaries and Dragonair.

14. Applicant's income derives from dividends paid out of operating returns from the companies through which it does business. As of December 31, 1994, 67.80% of applicant's income for the prior twelve months was produced by its majority-owned subsidiaries and Dragonair.

15. Applicant asserts that its historical development, its public representations of policy, the activities of its officers and directors, the nature of its assets, and the nature of its income demonstrates that applicant is not engaged primarily in the business of investing in securities. Applicant submits that it is primarily engaged, through controlled companies and majority-owned subsidiaries, in trade, distribution, transportation, power, and other infrastructure industries in the China region.

For the SEC, by the Division of Investment management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[3] Section 2(a)(24) of the Act defines a ''majority-owned subsidiary'' of a person as 11a company 50 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which * * * is a majority-owned subsidiary of such person.''

[4] ''Control'' is defined in section 2(a)(9) of the Act to mean ''the power to exercise a controlling influence over the management or polices of a company, unless such power is solely the result of an official position within such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.''

[5] *In the Matter of American Manufacturing Company, Inc.*, 41 S.E.C. 415, 419 (Mar. 11, 1963).

[Rel. No. IC–21283; No. 812–9376]

First Variable Life Insurance Company, et al.

August 15, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: First Variable Life Insurance Company (''First Variable''), First Variable Annuity Fund E (''Separate Account''), and First Variable Capital Services, Inc. (''Capital Services'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account or any other separate account (''Other Accounts'') established by First Variable to support certain variable annuity contracts (''Contracts'') as well as other variable annuity contracts that are substantially similar in all material respects to the Contracts (''Future Contracts''). This order will supersede prior orders issued by the Commission permitting Applicants to issue variable annuity contracts that provide for the deduction of mortality and expense risk charges from the Separate Account.

FILING DATE: Applicants filed their application on December 19, 1994, and filed amended applications on May 22, 1995, July 21, 1995, and August 15, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 11, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Arnold Bergman, First Variable Life Insurance Company, 600 Atlantic Avenue, 28th Floor, Boston, Massachusetts 02210.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. First Variable, a stock life insurance company, is organized in Arkansas, and licensed to do business in the District of Columbia, the United States Virgin Islands, and all states except New York.

2. The Separate Account is a separate account established by First Variable to fund the Contracts. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act, and interests in the Contracts are registered as securities under the Securities Act of 1933.

3. Capital Services will serve as the distributor and the principal underwriter for the Contracts. Capital Services, a wholly owned subsidiary of First Variable, is registered under the Securities Exchange Act of 1934 as a broker-dealer, and is a member of the National Association of Securities Dealers, Inc.

4. First Variable Advisory Services Corp., a wholly owned subsidiary of First Variable, is the investment advisor for the Trust.

5. By orders of the Commission,[1] Applicants were granted exemptions under Section 6(c) of the 1940 Act from the provisions of Section 26(a)(2) and 27(c)(2) to the extent necessary to permit the deduction of mortality and expense risk charges from the assets of the Separate Account in connection with the issuance of certain variable annuity contracts. Applicants now request that such orders be superseded by the order requested in this application.

6. The Contracts are three variable annuity contracts: VISTA Contracts, Direct Annuity Contracts, and Direct Annuity Plus Contracts. First Variable will make the Contracts available for use by individuals in retirement plans which may or may not qualify for federal tax advantages under the Internal Revenue Code. Each of the Contracts requires certain minimum initial purchase payments. Subsequent purchase payments will be at least $100 for the VISTA Contracts and the Direct Annuity Contracts. For the Direct Annuity Plus Contracts, the minimum subsequent purchase payments will be $500 for non-qualified Contracts and $100 for qualified Contracts.

7. The purchase payments under the Contacts will be allocated to the Separate Account and/or to the general account. The Separate Account is divided into subaccounts (''Subaccounts''), which will invest in the shares of one of the portfolios of Variable Investors Series Trust (''Trust''). The Trust is an open-end, management investment company and currently has seven portfolios. First Variable may establish additional Subaccounts and may substitute or add additional portfolios of the Trust or, where appropriate, of other registered, open-end investment companies.

8. The Contracts provide for a death benefit if the annuitant dies during the accumulation period. For the VISTA Contracts, the death benefit is the greater of: (1) The aggregate value; or (2) the sum of purchase payments less any withdrawals; or (3) the aggregate value as of the first day of the current five year Contract period [2] plus any purchase payments made since that day and less any amounts withdrawn since that day. Where permitted by state law, First Variable will provide a death benefit for its Direct Annuity Contracts that will be the greater of: (1) The purchase payments, less any withdrawals including any applicable Withdrawal Charge, as defined below; [3] (2) the Contract value; or (3) the Contract value as of the first day of the current five year Contract period plus any purchase payments made since that day and less any amounts withdrawn since that day. Otherwise, the death benefit will be the greater of: (1) The purchase payments, less any withdrawals including any applicable Withdrawal Charges; or (2) the Contract value. The death benefit for the Direct Annuity Plus Contracts will be the greater of the purchase payments, less any withdrawals, or the Contract value.

9. Certain charges and fees are assessed under the Contracts. In the case of the VISTA and Direct Annuity Contracts, prior to the annuity date, amounts allocated to the Separate Account may be transferred among Subaccounts without the imposition of any fee or charge if there have been no more than 12 transfers for the VISTA Contracts, or more than six transfers for the Direct Annuity Contracts, made in the Contract year. Subsequent transfers within a Contract year, however, will be assessed a $25 per transfer, or, if less, 2% of the amount transferred. First Variable will not impose a transfer fee on any transfers made by the owners of the Direct Annuity Plus Contracts. Applicants represent that the transfer fee is at cost with no anticipation of profit.

10. A withdrawal charge (''Withdrawal Charge'') may be imposed on certain withdrawals. The owner may withdraw the owner's interest in a Contract in whole or in part prior to the date annuity payments commence.[4] For the VISTA Contracts, an owner may make such withdrawals without charge in an amount not to exceed the withdrawal privilege amount (''Privilege Amount''). The Privilege Amount is equal to the sum of 10% of the new purchase payments not previously withdrawn, plus 100% of the excess of the value of a Contract over new purchase payments not previously withdrawn. New purchase payments are purchase payments made in the current and four previous Contract years. It is assumed that purchase payments are withdrawn in the order in which they were made. In the event that a withdrawal exceeds the Privilege Amount for the VISTA Contracts, the Withdrawal Charge is determined by multiplying the excess of the amount withdrawn over the Privilege Amount by a percentage that decreases annually from 5% to 0% over six Contract years.

No Withdrawal Charge will be assessed on withdrawals from the Direct Annuity Contracts unless the withdrawals exceed the free withdrawal amount (''Free Amount''). The Free Amount is determined as the sum of 10% of premiums that remain subject to the Withdrawal Charge, plus the excess of the Contract value over purchase payments not previously withdrawn, plus any purchase payments no longer subject to the Withdrawal Charge. Should the withdrawal exceed the Free Amount, the Withdrawal Charge for the Direct Annuity Contracts will be determined by multiplying the excess of the amount over the Free Amount by a percentage that decreases annually from 7% to 0% over six years from the Contract anniversary since the purchase payment. Purchase payments are deemed to be withdrawn in the order in which they are made. An owner may make a withdrawal each Contract year of the Free Amount provided that the minimum partial withdrawal amount is $1,000 or the owner's entire interest in the Subaccount, if less.

There will be no Withdrawal Change imposed on withdrawals made under the Direct Annuity Plus Contracts.

11. First Variable deducts on each valuation date an administration charge.

[1] *First Variable Life Ins. Co.*, Inv. Co. Act Rel. Nos. 18741 (Jun. 1, 1992) (Order), and 18695 (May 6, 1992) (Notice); *Monarch Life Ins. Co.*, Act Rel. Nos. 18165 (May 23, 1991) (Order), and 18117 (Apr. 26, 1991) (Notice); and *First Variable Life Ins. Co.*, Inv. Co. Act Rel. Nos. 15701 (Apr. 24, 1987) and 15644 (Mar. 26, 1987) (collectively, ''Existing Orders'').

[2] The first five year Contract period begins on the issue date, the second five year Contract period begins on the fifth Contract anniversary, and so forth.

[3] *See infra* at Paragraph 9.

[4] Although the VISTA Contracts provide that an owner may not make more than four partial withdrawals in any Contract year, First Variable does not and will not enforce this limitation.

For the VISTA and Direct Annuity Contracts, the administrative charge is equal, on an annual basis, to .15% of the net asset value of the Separate Account. For the Direct Annuity Plus Contracts, the administrative charge is equal, on an annual basis, to .25% of the average daily net asset value of the Separate Account. First Variable submits that it incurs additional administrative expenses for the Direct Annuity Plus Contracts because it permits an owner to make unlimited transfers without the imposition of any fee or charge.

12. An annual contract maintenance charge of $30 will be charged against each Contract (for the VISTA Contracts, it is only deducted during the accumulation period). For the VISTA Contracts, in the case of a total withdrawal occurring 31 or more days after the beginning of the Contract year, the full charge of $30 will be deducted. For the Direct Annuity Contracts, if the annuity date is not the Contract anniversary, a pro rata portion of the annual contract maintenance charge will be deducted on the annuity date. For the Direct Annuity Plus Contracts, if the Contract value on a Contract anniversary is at least $50,000, then no annual contract maintenance charge will be deducted (if a total withdrawal is made on other than a Contract anniversary and the Contract value for the valuation period during which the total withdrawal is made is less than $50,000, the full annual contract maintenance charge will be assessed at the time of the withdrawal).

13. The administration charge and the annual contract maintenance charge are designed to compensate First Variable for assuming administrative expenses related to the Separate Account and the issuance and maintenance of the Contracts. These charges will not be increased by First Variable. First Variable represents that it does not intend to profit from the administration charge and the annual contract maintenance charge.

14. First Variable deducts a mortality and expense risk charge from each Separate Account. First Variable represents that the aggregate morality and expenses risk charge is equal, on an annual basis, to 1.25% of the net asset value of each Subaccount of the Separate Account. Of this amount, approximately .80% is for mortality risks and .45% is for expense risks.[5]

15. First Variable assumes the mortality risk that the life expectancy of the annuitant will be greater than that assumed in the guaranteed annuity purchase rates, thus requiring First Variable to pay out more in annuity income than it had planned. Furthermore, First Variable assumes the mortality risk that it will waive the Withdrawal Charge in the event of the death of the owner under certain Contracts. Thus, First Variable assumes the risk that it may not be able to cover its distribution expenses and that the owner may die at a time when the amount of the death benefit payable exceeds the then net surrender value of the Contracts. The expense risk assumed by First Variable is that the Contract administration charge and the annual contract maintenance charge will be insufficient to cover the cost of administering the Contracts.

16. In the event the mortality and expense risk charges are more than sufficient to cover First Variable's costs and expenses, any excess will be a profit to First Variable. Any profit realized by these charges may be used by First Variable to, among other things, offset losses experienced when the Withdrawal Charges are insufficient. The mortality and expense risk charges may not be increased under the Contracts.

17. Various jurisdictions levy premium taxes on annuity premiums received by life insurance companies. First Variable may charge Contracts the amount of any tax levied as a result of the issuance, maintenance, surrender, or annuitization of a Contract at the time the purchase payment is received, or, if not previously deducted, such tax may be deducted: (1) At the annuity commencement date; (2) in the event of the annuitant's or owner's death prior to the annuity commencement date; (3) in the event of partial or total withdrawal; and (4) when payable by First Variable. For the Direct Annuity Contracts, First Variable intends to advance any premium taxes when due at the time purchase payments are made and then deduct premium taxes from an owner's Contract value at the time annuity payments begin or upon surrender if First Variable is unable to obtain a refund. For the Direct Annuity Plus Contracts, First Variable intends to deduct premium taxes when incurred. First Variable represents that state premium taxes may range up to 4% of purchase payments.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule, or regulation of the 1940 to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940, in relevant part, prohibit a registered unit investment trust, its depositor, or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the assets of the Separate Account and the Other Accounts in connection with the Contracts and Future Contracts of the 1.25% charge for the assumption of mortality and expense risks. Applicants believe that the terms of the relief requested with respect to any Future Contracts funded by Other Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, Applicants would have to request and obtain exemptive relief for each new Other Account it establishes to fund any Future Contract. Applicants submit that any such additional request for exemption would present no issues under the 1940 Act that have not already been addressed in this application.

Applicants submit that the requested relief is appropriate in the public interest, because it would promote competitiveness in the variable annuity contract market by eliminating the need for Applicants to file redundant exemptive applications, thereby reducing their administrative expenses and maximizing the efficient use of their resources. The delay and expense involved in having repeatedly to seek exemptive relief would reduce Applicants' ability effectively to take advantage of business opportunities as they arise.

Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional

[5] Under the Existing Orders, First Variable deducts on each valuation date a mortality and expense risk charge which is equal, on an annual basis, to 1.25% (consisting of approximately .75% for mortality risks and .50% for expense risks).

protection thereby. Investors might be disadvantaged as a result of Applicants' increased overhead expenses.

Applicants thus believe that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Applicants represent that the 1.25% per annum mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as, among others, the current charge levels, guaranteed annuity rates, and other contact charges and options. First Variable will maintain at its principal offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, Applicants' comparative review.

5. First Variable has conducted that there is a reasonable likelihood that the Separate Account's and Other Accounts' proposed distribution financing arrangements will benefit the Separate Account and the Other Accounts and their investors. First Variable represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion.

6. The Separate Account and Other Accounts will be invested only in management investment companies that undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by their board members, the majority of whom are not ''interested persons'' of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–20772 Filed 8–21–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21310; 812–9620]

Springtree Properties Limited Partnership, et al.; Notice of Application

August 16, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Springtree Properties Limited Partnership (the ''Partnership''), and John J. Hansman (''Hansman'') and Summit Investment Services, Inc. (''Summit'') (collectively, the ''General Partners'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit the Partnership to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

FILING DATE: The application was filed on June 2, 1995 and will be amended during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 11, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street N.W., Washington, D.C. 20549. Applicants, 600 Stewart Street, Suite 1704, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership was formed as a Washington limited partnership on December 15, 1994. The Partnership will operate as a ''two-tier'' partnership, *i.e.*, the Partnership, as a limited partner, will invest in other limited partnerships (the ''Property Partnerships''). The Property Partnerships will be managed by general partners (the ''Developer General Partners'') that are not affiliated with the Partnership or the General Partners. The Property Partnerships, in turn, will engage in the ownership and operation of apartment complexes (''Properties'') expected to qualify for low income housing tax credits (''Credits'') under the Internal Revenue Code of 1986 (the ''Code'').

2. The objectives of the Partnership are to: (a) Provide tax benefits, including Credits and passive activity losses, which investors may use to offset their Federal income tax liabilities; (b) distribute proceeds from liquidation, sale, or refinancing transactions; and (c) to the extent permitted by the terms of applicable local, state, and/or federal government assistance, distribute cash from operating the Properties.

3. Units of limited partnership interest in the Partnership (the ''Units'') will be offered and sold without registration under the Securities Act of 1933 (the ''Securities Act'') in reliance on section 4(2) of the Securities Act and Regulation D thereunder. No Units will be sold unless subscriptions to purchase at least five Units (the ''Minimum Offering'') are received and accepted by the General Partners prior to March 31, 1996. If the Minimum Offering has not been sold by such date, no Units will be sold and all funds received from subscribers will be refunded with interest.

4. Until the Minimum Offering has been sold, offering proceeds will be deposited and held in trust for the benefit of purchasers in an escrow account with Seattle-First National Bank in Seattle, Washington, to be used only for the specific purposes set forth in the Confidential Private Placement Memorandum dated May 16, 1995 (the ''Memorandum''). The Partnership intends to apply offering proceeds to the acquisition of limited partnership interests in the Property Partnerships as promptly as possible (although such proceeds may be invested temporarily in bank time deposits, certificates of deposit, money market accounts, and government certificates). The Partnership will not trade or speculate in temporary investments.

5. The Partnership will require that each purchaser of Units represent in writing that such purchaser meets the applicable suitability standards. Each individual subscriber must represent that he or she has: (a) A net worth (exclusive of home, home furnishings, and automobiles) of at least $200,000 per Unit; or (b) a net worth (exclusive of home, home furnishings and automobiles) of not less than $125,000 per Unit and annual income of at least $100,000 ($75,000 in the case of a purchase of one-half of a Unit). Units will be sold in certain states only to persons who meet different standards, as set forth in the Memorandum. The Partnership will also allow certain corporate subscribers to purchase Units.

6. Although the Partnership will not have responsibility for the day-to-day management of the Properties, the Partnership's ownership of limited partnership interests in the Property Partnerships will, in an economic sense, be tantamount to direct ownership of each Property. Typically, the Partnership will acquire at least a 98% interest in the profits, losses, Credits, and cash flow of each Property Partnership. In addition, the General Partners anticipate that the Partnership will receive approximately 49.99% of any gain and residual proceeds generated by the Property Partnerships. A small percentage interest in these items will be allocated to Summit as the special limited partner, and the remaining interest in such items will be allocated to the Developer General Partner.

7. In some cases, however, the Partnership and Summit may acquire smaller aggregate percentage interests in a particular Property Partnership. In those cases where the Partnership acquires less than a 98% interest in the profits, losses, Credits, and cash flow of a Property Partnership: (a) The Partnership will own a minimum of 49.49% of such Property Partnership items; and (b) the balance of the limited partnership interest in such Property Partnership, after the allocation of a .01% interest to Summit, will be owned by a single affiliated ''upper-tier'' limited partnership of which Hansman and Summit will also be the general partners. Moreover, the Partnership's investment in any Property Partnership in which it owns less than 50% (but more than 49.49%) of the profits, losses, Credits, and cash flow will not constitute more than 15% of its aggregate investment in all Property Partnerships.

8. The Partnership and Summit will have rights under the terms of the limited partnership agreements for the Property Partnerships to consent to certain fundamental decisions, which will generally include: (a) The right to approve or disapprove any sale or refinancing of a Property; (b) the right to replace the Developer General Partner on the basis of the Developer General Partner's performance and discharge of its obligations; (c) any borrowing of money or encumbering of Property Partnership assets; (d) any change in identity of the Developer General Partner; (e) any tax elections; and (f) any admission of additional partners.

9. The Partnership will be managed by the General Partners pursuant to a partnership agreement (the ''Partnership Agreement''). Holders of Units in the Partnership (''Investor Limited Partners''), consistent with their limited liability status, will not be entitled to participate in the control of the Partnership's business. However, a majority-in-interest of the Investor Limited Partners will have rights. (a) To amend the Partnership Agreement (subject to certain limitations); (b) to remove any General Partner and elect a replacement; (c) to dissolve the Partnership; (d) to consent to the sale or refinancing of a Property; and (e) to designate a replacement for Summit as the special limited partner of each Property Partnership. In addition, under the Partnership Agreement, each Investor Limited Partner is entitled to review all books and records of the Partnership.

10. The Partnership Agreement and Memorandum contain numerous provisions designed to ensure fair dealing by the General Partners with the Investor Limited Partners. All fees and compensation to be paid to the General Partners and their affiliates are specified in the Partnership Agreement and Memorandum. While the fees and other forms of compensation that will be paid to the General Partners and their affiliates will not have been negotiated at arm's length, applicants believe that the compensation and fees are reasonable and comparable to those that would be charged by third parties for the services provided by the General Partners and their affiliates.

11. The Partnership Agreement also contains various provisions designed to significantly reduce conflicts of interest between the Partnership and the General Partners and their affiliates. For example, in the event an investment in a Property Partnership becomes available which would satisfy the investment criteria of the Partnership and any other partnership in which the General Partners and/or their affiliates have an interest, the General Partners will analyze each opportunity in relation to the investment objectives of each partnership and will consider such factors as cash available for investment, maximum investment limit per acquisition, estimated income tax effects, leverage policies, any regulatory restrictions on investment policies, and the length of time funds have been available for investment. The General Partners will then determine which partnership should have the opportunity to make the particular investment and, if a particular investment is suitable for more than one partnership, the General Partners will recommend such investment to the partnership which has had the most funds available for investment for the longest period of time.

Applicants' Legal Analysis

1. Applicants believe that the Partnership is not an investment company under sections 3(a)(1) or 3(a)(3) of the Act. If the Partnership is deemed to be an investment company, however, applicants request an exemption under section 6(c) from all provisions of the Act.

2. Section 3(a)(1) of the Act provides that an issuer is an investment company if it is, or holds itself out as being, engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Applicants believe that the Partnership is not an investment company under section 3(a)(1) because the Partnership will be in the business of investing in, and being beneficial owner of, the Properties, not securities.

3. Section 3(a)(3) of the Act provides that an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items). Applicants believe that the Partnership's interests in the Property Partnerships should not be considered investment securities because such interests are not readily marketable, have no value apart from the value of the Properties owned by the Property Partnerships, and cannot be sold without severe adverse tax consequences.

4. Applicants believe that the two-tier structure is consistent with the purposes and criteria set forth in the SEC's release concerning two-tier real estate partnerships (the ''Release''). [1] The

[1] Investment Company Act Release No. 8456 (Aug. 9, 1974).

Release states that two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for an exemption from the Act under section 6(c). Section 6(c) provides that the SEC may exempt any person from any provision of the Act and any rule thereunder if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. The Release lists two requirements, designed for the protection of investors, which must be satisfied by two-tier partnerships to qualify for an exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

6. Applicants state, among other considerations, that the suitability standards set forth in the Memorandum, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Property Partnership by various Federal, state, and local agencies provide protection to Unitholders comparable to that provided by the Act. In addition, applicants assert that the requested exemption is both necessary and appropriate in the public interest.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–20770 Filed 8–21–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 04/74–0262]

Issuance of a Small Business Investment Company License

On June 13, 1995, a notice was published in the **Federal Register** (60 FR 31179) stating that an application had been filed by Blue Ridge Investors Limited Partnership, 300 North Greene Street, Suite 2100, Greensboro, North Carolina 27401, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business June 28, 1995 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/74–0262 on July 28, 1995, to Blue Ridge Investors Limited Partnership to operate as a small business investment company.

The Licensee has initial private capital of $13.1 million, and Mr. Edward C. McCarthy will manage the fund. The stock of the Licensee is owned by 58 investors, including individuals, corporations, and personal trusts. No one investor owns more than 10% of the partnership.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 16, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–20774 Filed 8–21–95; 8:45 am]

BILLING CODE 8025–01–P

[License No. 09/79–0403]

Issuance of a Small Business Investment Company License

On April 11, 1995, a notice was published in the **Federal Register** (60 FR 18437) stating that an application had been filed by Kline Hawkes California SBIC, L.P., 11726 San Vicente Blvd., Suite 300, Los Angeles, California 90049, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business April 26, 1995 to submit their comments to SBA. No negative comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/79–0403 on July 28, 1995, to Kline Hawkes California SBIC, L.P., to operate as a small business investment company.

The Licensee has initial private capital of $30 million, and Mr. Frank R., Kline Jr. will manage the fund. At the present time, all of the stock of the Licensee is owned indirectly by the California Public Employees Retirement System.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 16, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–20775 Filed 8–21–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 2241]

Notice of Availability of Intergovernmental Panel on Climate Change (IPCC) Draft Synthesis Report and Public Comment Period

AGENCY: Department of State, Bureau of Oceans and International Environmental and Scientific Affairs.

SUMMARY: The Intergovernmental Panel on Climate Change (IPCC) has prepared a draft report titled: ''The IPCC Assessment of Knowledge Relevant to the Interpretation of Article 2 of the UN Framework Convention on Climate Change: A Synthesis Report 1995'' based on material prepared and reviewed by each of its working groups (on science, impacts and response strategies, and economics and crosscutting issues). This draft 38-page report (plus tables and figures), and its 8-page Summary for Policymakers, needs to be peer-reviewed by experts and governments. The IPCC Secretariat requires comments on this report to effect appropriate revisions prior to the final acceptance of the synthesis report and review and line-by-line adoption of the Summary for Policymakers at a plenary session of the IPCC in December 1995 in Rome. The U.S. Subcommittee on Global Change Research (SGCR) will be responsible for coordinating the preparations of the comments of the United States Government. Through this notice, we are announcing the availability of the draft report, and requesting comments on the report by noon, September 6, 1995 from experts and interested groups and individuals. These comments will be reviewed, combined and incorporated as appropriate, in the process of preparing official U.S. Government comments to the IPCC.

DATES: Written comments (hard copy and if possible on a 3.5 inch diskette in either Microsoft Word or WordPerfect format) on the draft Synthesis Report should be received on or before noon,

September 6, 1995. The deadline cannot be extended because the IPCC has a strict timetable for the review process.

ADDRESSES: Comments should be submitted by mail to: IPCC Synthesis Report Comments, Office of the U.S. Global Change Research Program, 300 D Street SW, Suite 840, Washington, DC 20024 or by E-mail in ASCII format on Internet to ''office@usgcrp.gov''. Copies of the draft Synthesis Report may be obtained by (1) telephone request to Ms. Sandra Vaughn-Cooke at (202) 651–8250; (2) sending an E-mail to ''office@usgcrp.gov''; (3) faxing a request to (202) 554–6715 or (4) sending a letter directed to Ms. Vaughn-Cooke at the address above.

FOR FURTHER INFORMATION CONTACT: Dr. Michael MacCracken, Office of the U.S. Global Change Research Program at (202) 651–8250, or Mr. Daniel A. Reifsnyder, Director, Office of Global Change, U.S. Department of State at (202) 647–4069.

SUPPLEMENTARY INFORMATION:

Background

The Intergovernmental Panel on Climate Change was jointly established by the United Nations Environment Program and the World Meteorological Organization to conduct periodic assessments of the state of knowledge concerning climate change. Working Group I addresses the state of the science; Working Group II addresses vulnerability to and impacts of climate change, as well as mitigation and adaptation response options; and Working Group III addresses economics and other cross-cutting issues. Each working group is charged with issuing periodic assessments. The first assessment report was issued in 1990, a second assessment is anticipated for release in December 1995.

In addition to the three Working Group reports and their Summaries for Policymakers, the IPCC has prepared a report titled: ''The IPCC Assessment of Knowledge Relevant to the Interpretation of Article 12 of the UN Framework Convention on Climate Change: A Synthesis Report 1995.'' The Synthesis Report is accompanied by a Summary for Policymakers which will be approved on a line-by-line basis in December. The Synthesis Report is based on the contribution of all three working groups and their draft summaries for policymakers—which are now being reviewed and will be approved on a line-by-line basis by IPCC member governments. The Working Group I report is to be approved in Madrid in November 1995; the Working Group II report is to be approved in Montreal in October 1995, and Working Group III has approved part of its report (in Geneva in July) and will conclude its approval process in Montreal in October 1995.

Public Input Process

The member countries of the IPCC have established a timetable that includes a brief period for comments from governments so that the IPCC can meet its timetable for a timely completion of the Second Assessment Report—including this Article 2 synthesis document. The Subcommittee on Global Change Research is responsible for coordinating the preparation of the U.S. response. Through this notice, the U.S. Government is seeking the views of experts and interested groups and individuals to help in the formulation of its response. Comments that are provided will be reviewed, integrated, and used, as appropriate, in the preparation of the official U.S. comments.

According to the IPCC proposed process, to the extent that there are modifications to these underlying reports, the Article 2 synthesis document will be modified to maintain consistency among all the reports. The IPCC has requested that all comments be forwarded to the Secretariat by September 12, 1995. In order to allow time for U.S. Government review, all reviewers are requested to submit their comments no later than noon, September 6, 1995.

An information sheet providing specific requests for formatting submissions will be provided with each mailing of the synthesis report. In this review process, the emphasis should be on providing detailed recommendations on specific areas in which the reviewer has expertise. To be most useful, comments should be specific in suggesting wording changes to the text of a particular paragraph or section, and where appropriate offer supporting information and peer reviewed references supporting the proposed changes. Comments on the overall tone and the scientific validity of the Report, and those expressing agreement or disagreement with specific major points in the Executive Summary are also solicited.

Dated: August 17, 1995.

Rafe Pomerance,

Acting Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 95–20791 Filed 8–21–95; 8:45 am]

BILLING CODE 4710–09–M

[Public Notice 2239]

Director General of the Foreign Service and Director of Personnel; State Department Performance Review Board Members (At Large Board and OIG Board)

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Executive Resources Board of the Department of State has appointed the following individuals to the State Department Performance Review Board (At Large Board) register.

Joan E. Donoghue, Assistant Legal Adviser, Office of the Legal Adviser, Department of State

Christopher Flaggs, Associate Comptroller Domestic Financial Operations, Bureau of Finance and Management Policy, Department of State

Kenneth Hunter, Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State

Michael Schneider, Deputy Associate Director, United States Information Agency

Robert T. Spencer, Executive Director, Bureau of Diplomatic Security, Department of State

The Inspector General of the Department of State has appointed the following individuals to the State Department Office of the Inspector General Performance Review Board register.

Dennis Duquette, Deputy Inspector General for Management and Policy, Department of Health and Human Services

Kenneth Hunter, Deputy Assistant Secretary for Passport Services, Department of State

Harvey D. Thorp, Assistant Inspector General for Audits, Office of Personnel Management

Dated: August 15, 1995.

Jennifer C. Ward,

Acting Director General of the Foreign Service and Director of Personnel.

[FR Doc. 95–20793 Filed 8–21–95; 8:45 am]

BILLING CODE 4710–24–M

[Public Notice 2240]

Bureau of Oceans and International Environmental and Scientific Affairs; Certifications Pursuant to Section 609 of Public Law 101–162

SUMMARY: On April 28, 1995, the Department of State certified, pursuant to Section 609 of Public Law 101–162, that 9 countries with commercial

shrimp trawl fisheries in the Gulf of Mexico, Caribbean and Western Atlantic Ocean (Belize, Brazil, Colombia, Guyana, Honduras, Mexico, Nicaragua, Panama, and Venezuela) have adopted programs to reduce the incidental capture of sea turtles in such fisheries comparable to the program in effect in the United States. The Department certified that the fishing environment in two other countries (Costa Rica and Guatemala) does not pose a threat of the incidental taking of sea turtles protected under Public Law 101–162. The Department was unable to issue certifications on April 28 for Suriname, Trinidad and Tobago, and French Guiana and, as a result, shrimp imports from these countries were prohibited effective May 1, 1995, pursuant to Public Law 101–162. The Department of State subsequently issued a certification for Trinidad and Tobago on August 15, 1995 and, as a result, the ban on shrimp imports that had been in effect since May 1, 1995, was lifted.

EFFECTIVE DATE: August 22, 1995.

FOR FURTHER INFORMATION CONTACT: Hollis Summers, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818; telephone: (202) 647–3940.

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101–162 prohibits imports of shrimp from certain nations unless the President certifies to the Congress by May 1 of each year either: (1) That the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States; or (2) that the fishing environment in the harvesting nations does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the **Federal Register** on February 18, 1993 (58 FR 9015).

The countries subject to the provisions of Public Law 101–162 include Belize, Brazil, Colombia, Costa Rica, French Guiana (EU), Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Suriname, Trinidad and Tobago, and Venezuela. On April 28, 1995, the Department of State certified that 11 of the 14 affected countries have met, for the current year, the requirements of the law. The countries that did not receive a certification at that time were Trinidad and Tobago, Suriname, and French Guiana. As a result, shrimp imports from Trinidad and Tobago were prohibited pursuant to Public Law 101–162 effective May 1, 1995. The ban on shrimp imports from Suriname (in effect since May 1, 1993) and French Guiana (in effect since May 1, 1992) remained in place.

The countries that received a certification on April 28, 1995, were Belize, Brazil, Colombia, Costa Rica, Guatemala, Guyana, Mexico, Honduras, Nicaragua, Panama, and Venezuela; with Trinidad and Tobago certified on August 15, 1995. Of these, the Department certified that the fishing environment in Costa Rica and Guatemala does not pose a threat of the incidental taking of sea turtles protected by Public Law 101–162. (In both these countries, the commercial shrimp trawl fleet operates exclusively in the Pacific Ocean with no activity on the Caribbean side.) The Department certified that the other ten countries have adopted a program to reduce the incidental capture of sea turtles in the commercial shrimp trawl fishery comparable to the U.S. program.

In reviewing information for the purpose of making the certifications, the Department looked at three principal elements of each country's program: (1) The legal and regulatory framework establishing the TED requirement for all commercial shrimp trawl vessels, except those specifically exempt under the Department's guidelines; (2) the implementation of that requirement and the extent to which TEDS are in use on all such vessels; and (3) the efforts of each country to monitor and enforce the TED requirement to ensure compliance. Because each country that received certification this year has established and is implementing the legal requirement to use TEDS, the Department will place particular emphasis in making future certifications on the third element, monitoring and enforcement of the TED requirement.

Finally, in implementing the ban on shrimp imports from Trinidad and Tobago which was in effect from May 1, 1995, to August 15, 1995, any shipment with a recorded date of export prior to May 1, 1995, was allowed entry into the United States even if it arrived on or after May 1, 1995. That is, shipments in transit prior to the effective date of the ban were not barred from entry.

Dated: August 16, 1995.

R. Tucker Scully,

Acting Deputy Assistant Secretary For Oceans.

[FR Doc. 95–20792 Filed 8–21–95; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Pease International Tradeport, Portsmouth, New Hampshire

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map for Pease International Tradeport, as submitted by the Pease Development Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150, is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Pease International Tradeport under Part 150 in conjunction with the niose exposure map, and that this program will be approved or disapproved on or before February 10, 1996.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is August 14, 1995. The public comment period ends on October 13, 1995.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE–600, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Pease International Tradeport is in compliance with applicable requirements of part 150, effective August 14, 1995. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before February 10, 1996. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicits non compatible land

uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such map to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted a noise exposure map that is found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the introduction of additional non compatible uses.

The Pease Development Authority submitted to the FAA on August 1, 1995, a noise exposure map, descriptions, and other documentation which were produced during the Airport Noise Compatibility Planning (part 150) study at Pease International Tradeport from May 1991 to June 1995. It was requested that the FAA review this material as the noise exposure map, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure map and related descriptions submitted by Pease Development Authority. The specific maps under consideration were Figures 4–7, ''Noise Exposure Map for 1993–94 Base Case'', 4–10, ''Noise Exposure Map for Future Scenario A'', 4–15, ''Noise Exposure Map for Future Scenario D'', 6–16, ''Ldn Contours for 1993–94 Base Case With Noise Abatement'', 6–17, ''Ldn Contours for Scenario A with Noise Abatement, Excluding Aircraft Access Restrictions'', and 6–19, ''Ldn Contours for Scenario D with Noise Abatement, Excluding Aircraft Access Restrictions'', along with the supporting documentation in ''Pease International Tradeport; FAR part 150 Airport Noise Compatibility Study''. The FAA has determined that the maps for Pease International Tradeport are in compliance with applicable requirements. This determination is effective on August 14, 1995.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted the map, or with those agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 or FAR part 150, that the statutorily required consultation has been accomplished.

The FAA formally received the noise compatibility program for Pease International Tradeport, also effective on August 14, 1995. Primarily review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 10, 1996. The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non compatible land uses and preventing the introduction of additional non compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Pease Development Authority, Suite 1, 601 Spaulding Turnpike, Portsmount, New Hampshire 03801–2833

Federal Aviation Administration, New England Region, Airports Division, ANE–600, 12 New England Executive Park, Burlington, Massachusetts 01803

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts on August 14, 1995.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 95–20795 Filed 8–21–95; 8:45 am]

BILLING CODE 4910–13–M

Intent To Prepare an Environmental Impact Statement and To Hold Environmental Scoping Meetings for Airside Improvements at Boston-Logan International Airport, East Boston, MA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public environmental scoping meetings.

SUMMARY: The Federal Aviation Administration (FAA) is issuing notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a series of airside improvements under consideration by the Federal Aviation Administration and Massachusetts Port Authority (Massport) for Boston-Logan International Airport, in the City of Boston, Massachusetts. To ensure that all significant issues related to this planning effort are identified, public scoping meetings will be held.

FOR FURTHER INFORMATION CONTACT: John Silva, Manager, Environmental Programs, Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone number: 617–238–7602.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with Massport, will prepare an EIS on a proposal to implement a program of airside improvements to reduce congestion and delay at Logan and to improve airfield operating efficiency. Logan is presently

America's 13th busiest airport for passengers and ranks 14th for total aircraft operations. Growth is projected to occur even as other air facilities in the region relieve some of the anticipated increase.

The EIS will evaluate a range of actions, including a new commuter unidirectional Runway 14/32; a new Centerfield Taxiway; several runway extension/realignment options; changes to arrival and departure procedures; upgrading of the Runway 33L Instrument Landings System (ILS) to Category III; modifications to aircraft instrument operations; and a pricing structure to reduce demand levels during peak period.

Comments and suggestions are invited from federal, state, and local agencies, and other interested parties, in order to ensure that a full range of issues related to the airside improvements under consideration is identified and addressed in the scope of work for the EIS. The EIS will be jointly prepared as an Environmental Impact Report (EIR), as required by regulations pursuant to the Massachusetts Environmental Policy Act.

PUBLIC SCOPING MEETINGS: In order to provide for both agency and public input, two scoping sessions have been scheduled on September 21, 1995. An afternoon scoping session will be held for federal, state and local agencies at 2:00 pm in the Massport Media Room, Logan International Airport Old Tower Building, 2nd level (next to the Communications Department). This will be preceded by a bus tour of the Airside Improvement Projects. Agency personnel interested in the tour should assemble in the Media Room at 12:30 pm. An evening scoping session for public input will be held at 6:00 pm. This meeting, at which agency personnel are invited to attend, will be held at the State Transportation Building, 10 Park Plaza, Conference Rooms 1 and 2, Boston, Massachusetts.

Issued in Burlington, Massachusetts, on August 14, 1995.

Vincent A. Scarano,

Manager, Airports Division FAA, New England Region.

[FR Doc. 95–20796 Filed 8–21–95; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–95–29]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, the corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before, September 11, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov. The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 15, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27491
Petitioner: Helicopter Association International/Association of Air Medical Services
Sections of the FAR Affected: 14 CFR 135.213(b), 135.219, and 135.225(a)(1), (a)(2), (f), and (g)
Description of Relief Sought: To permit emergency medical service helicopters operators to file an instrument flight rule (IFR) flight plan and conduct IFR approaches and takeoffs at airports and helicopters that do not have an approved weather reporting source. The exemption, if granted, would also permit takeoffs under IFR, or initiation of IFR or over-the-tip operations when the latest weather reports or forecasts do not indicate that weather conditions at the estimated time of arrival at the intended landing area will be at or above authorized IFR landing minimums.

Docket No.: 28257
Petitioner: Flight Structures, Inc.
Sections of the FAR Affected: 14 CFR 25.785(d), 25.813(b), 25.857(e), 25.1447(c)(1), and 25.1447(c)(3)(ii)
Description of Relief Sought: To permit supplemental type certification of the Airbus Model A300–B4–203 airplane (converted to a freighter) and the carriage on the main deck of up to five non-crewmembers in addition to the maximum of three flight crewmembers.

Docket No.: 28260
Petitioner: Emery Worldwide Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.503, 121.505, and 121.511
Description of Relief Sought: To allow Emery Worldwide Airlines, Inc., (EWA) pilots and flight engineers to operate within the contiguous 48 states with DC–8 aircraft in accordance with the provisions of § 121.471, which apply to domestic air carriers, although EWA is a supplemental air carrier.

Docket No.: 28261
Petitioner: Ameriflight, Inc.
Sections of the FAR Affected: 14 CFR 91.205(d)(6)
Description of Relief Sought: To permit Ameriflight to conduct instrument flight rule (IRF) operations with inoperative aircraft clocks installed in its aircraft.

Docket No.: 28263
Petitioner: Mr. William T. Reiners
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Reiners to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Dispositions of Petitions

Docket No.: 27155
Petitioner: Saab Aircraft AB
Sections of the FAR Affected: 14 CFR 25.562(c)(5)
Description of Relief Sought Disposition: To extend Exemption No. 5623, as

amended, which addresses Head Injury Criterion (HIC) for passengers seated behind interior furnishings. *Partial Grant, July 17, 1995, Exemption No. 5623C.*

Docket No.: 27167
Petitioner: Reforestation Services, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought Disposition: To extend Exemption No. 5716, which allows the Reforestation Services, Inc., to operate part 135 aircraft without a TSO–C112 (Mode S) transponder installed on its aircraft. *Grant, July 19, 1995, Exemption No. 5716A*

[FR Doc. 95–20789 Filed 8–21–95; 8:45 am]
BILLING CODE 4910–B–M

[Summary Notice No. PE–95–28]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 11, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov. The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 15, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 27578
Petitioner: General Electric Aircraft Engines
Sections of the FAR Affected: 14 CFR 21.325(b)(3)
Description of Relief Sought/ Disposition: To allow the issuance of U.S. export airworthiness approvals for Class II and Class III products to be manufactured in Tokyo, Japan, by Ishikawajima-Harima Heavy Industries Co., Ltd., as an approved supplier to General Electric Aircraft Engines U.S. under Production Certificate No. 107. Grant, June 23, 1995, Exemption No. 6113

Docket No.: 27934
Petitioner: Alaska Airlines
Sections of the FAR Affected: 14 CFR III(d)(2), appendix A, III(d)(2), and appendix B, III(d)(2); appendix E III(n)(2), and appendix F, III(d)(2), part 121
Description of Relief Sought/ Disposition: To permit Alaska Airlines (ALA) to conduct, in a simulator, circling approaches that do not permit a normal landing on a runway that is at least 90 degrees from the final approach course, in both ALA's approved training course, and in practical tests for the issuance of airline transport pilot certificates. Denial, June 29 1995, Exemption No. 6115

Docket No.: 28067
Petitioner: The University of Oklahoma
Sections of the FAR Affected: 14 CFR 61.187(b)
Description of Relief Sought/ Disposition: To allow The University of Oklahoma (the University) to assign flight instructors who have held their flight instructor certificates for less than 24 months to teach the University's flight instructor certification courses. Grant, June 28, 1995, Exemption No. 6114

Docket No.: 28083
Petitioner: Western Oklahoma State College
Sections of the FAR Affected: 14 CFR 141.65
Description of Relief Sought/ Disposition: To allow Western Oklahoma State College to recommend graduates of its approved certification courses for flight instructor certificates and airline transport pilot certificates without taking the FAA written test. Grant, June 29, 1995, Exemption No. 6117

Docket No.: 28102
Petitioner: FlightSafety International
Sections of the FAR Affected: 14 CFR 61.187(b)
Description of Relief Sought/ Disposition: To permit FlightSafety International to utilize certificated flight instructors who have given more than 500 hours of dual instruction, but have held a flight instructor certificate for less than 24 months preceding the date of instruction given, to train and recommend flight instructor candidates for initial instructor certification. Grant, June 29, 1995, Exemption No. 6118

Docket No.: 28106
Petitioner: Southwest Airlines Co.
Sections of the FAR Affected: 14 CFR 121.312(a)(2)
Description of Relief Sought/ Disposition: To exempt the Southwest Airlines Co., from the heat release requirements of § 121.312(a)(2) for Boeing Model 737–300 series airplanes. Grant, June 16, 1995, Exemption No. 6104

Docket No.: 28148
Petitioner: Capital City Air Carrier, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Capital City Air Carrier, Inc., to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. Grant, July 3, 1995, Exemption No. 6121

Docket No.: 28176
Petitioner: United Beechcraft, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit United Beechcraft, Inc., to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. Grant, July 5, 1995, Exemption No. 6120

Docket No.: 28206
Petitioner: Silver Moon Aviation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Silver Moon Aviation to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. Grant, July 3, 1995, Exemption No. 6122

Docket No.: 28245
Petitioner: Mr. Jacques E. Siedentopp, Jr.
Sections of the FAR Affected: 14 CFR 61.151(a)
Description of Relief Sought/ Disposition: To allow Mr. Siedentopp to obtain an airline transport pilot (ATP) certificate before his 23rd birthday. Denial, July 6, 1995, Exemption No. 6128

[FR Doc. 95–20788 Filed 8–21–95; 8:45 am]

BILLING CODE 4910–13–M'

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at General Mitchell International Airport, Milwaukee, Wisconsin and Use the Revenue From a PFC at General Mitchell International Airport and Lawrence J. Timmerman Airport, Milwaukee, Wisconsin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at General Mitchell International Airport and use the revenue at General Mitchell International Airport and Lawrence J. Timmerman Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 21, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. C. Barry Bateman, Airport Director, of the Milwaukee County Airport Division at the following address: Milwaukee County Airport Division, 5300 S. Howell Avenue, Milwaukee, Wisconsin 53207–6189.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Milwaukee County Airport Division under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450, 612–725–4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at General Mitchell International Airport and use the revenue at General Mitchell International Airport and Lawrence J. Timmerman Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 8, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by Milwaukee County was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 2, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Proposed charge effective date: February 1, 1996.
Proposed charge expiration date: February 1, 2002.
Total estimated PFC revenue: $32,037,000.
Brief description of proposed project(s):

Projects to Impose and Use

General Mitchell International

Environmental Impact Statement; West Perimeter Fencing Replacement; West Perimeter Road Repair; Hutsteiner/ Service Road Repairs; Pave Taxiway B Shoulders; PFC Administration Costs; Phase 1 Mitigation Program; School/ Church Sound Insulation
Lawrence J. Timmerman Airport Master Plan Update

Impose Only Projects

Runway 7L–25R Extension; Surface Movement Control System Construction; School/Church Sound Insulation II
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/ Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the General Mitchell International Airport.

Issued in Des Plaines, Illinois on August 14, 1995.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–20703 Filed 8–21–95; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at General Mitchell International Airport, Milwaukee, Wisconsin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at General Mitchell International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 21, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. C. Barry Bateman, Airport Director, of the Milwaukee County Airport Division at the following address: Milwaukee County Airport Division, 5300 S. Howell Avenue, Milwaukee, Wisconsin 53207–6189.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Milwaukee County Airport Division under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450, 612–725–4221. The application may be

reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at General Mitchell International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 26, 1995, the FAA determined that the application to use the revenue from a PFC submitted by Milwaukee County was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 21, 1995.

The following is a brief overview of the application.

Level of the PFC: $3.00

Actual charge effective date: May 1, 1995.

Estimated charge expiration date: April 1, 1999.

Total approved net PFC revenue: $28,785,277.

Brief description of proposed project(s): Sales Assistance in Runway C–1 Area; Realign Runway 7L–25R.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the General Mitchell International Airport.

Issued in Des Plaines, Illinois on August 14, 1995.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–20702 Filed 8–21–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Coconino County, AZ

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Flagstaff, Coconino County, Arizona.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Davis, District Engineer, Federal Highway Administration, 234 North Central Avenue, Suite 330, Phoenix, AZ 85004. Telephone: (602) 379–3646.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arizona Department of Transportation and the City of Flagstaff, will prepare an environmental impact statement (EIS) on a proposal to evaluate alternatives for improving U.S. 180 to alleviate operational and safety problems and to meet the existing and future traffic demands of north-south traffic through the City of Flagstaff.

Several location alternatives are being considered including the ''no action'' alternative. The ''build'' alternatives include design variations of grade and alignment, as well as a variety of environmental issues.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies and to private interest groups.

Upon completion of the draft EIS, one or more public hearings will be held.

A formal scoping message will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments are invited from all interested parties. Comments or questions concerning this proposed action and EIS should be directed to the Federal Highway Administration at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 14, 1995.

Kenneth H. Davis,

District Engineer, Phoenix, Arizona.

[FR Doc. 95–20727 Filed 8–21–95; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Safety Performance Standards, Research and Safety Assurance Programs Meetings

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA Industry Meetings.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's safety performance standards, safety assurance and other programs. In addition, NHTSA will hold a separate public meeting to describe and discuss specific research and development projects.

DATES: The Agency's regular, quarterly public meeting relating to its safety performance standards, safety assurance and other programs will be held on September 22, 1995, beginning at 9:30 a.m. and ending at approximately 12:30 p.m. Questions relating to the above programs must be submitted in writing by September 13, 1995, to the address shown below. If sufficient time is available, questions received after the September 13, date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by September 13, 1995, and the issues to be discussed will be mailed to interested persons by September 15, 1995, and will be available at the meeting.

Also, the agency will hold a second public meeting on September 21, devoted exclusively to a presentation of research and development programs. This meeting will begin at 1:30 p.m. an end at approximately 5:00 p.m. That meeting is described more fully in a separate announcement.

ADDRESSES: Questions for the September 22, NHTSA Technical Industry Meeting, relating to the agency's safety performance standards and safety assurance programs, should be submitted to Barry Felrice, Associate Administrator for Safety Performance Standards, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590. The meeting will be held at the Holiday Inn Capitol, 550 C Street, SW, (Columbia North Room), Washington, DC 20024.

SUPPLEMENTARY INFORMATION: NHTSA will hold this regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's safety performance standards, safety assurance and other programs. Questions on aspects of the agency's research and development activities that relate to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical,

interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

We would appreciate the questions you send us to be organized by categories to help us to process the questions into agenda form more efficiently.

Sample format as follows:

I. Rulemaking
A. Crashavoidance
B. Crashworthiness
C. Other Rulemakings
II. Consumer Information
III. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of ''auxiliary aids'' (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, Brailled materials, or large print materials and/or a magnifying device), please contact Barbara Carnes on (202) 366–1810, by COB September 11, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–20785 Filed 8–21–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–8; Notice 2]

Spartan Motors, Inc.; Denial of Application for Temporary Exemption From Three Federal Motor Vehicle Safety Standards

This notice denies the application of Spartan Motors, Inc., of Charlotte, Michigan, to be exempted from three Federal motor vehicle safety standards for light trucks that it converts to electric power. The basis of the application was that an exemption would facilitate the development or field evaluation of a low-emission motor vehicle, and would not unreasonably lower the safety level of the vehicle. The basis of the denial is that Spartan has failed to provide sufficient information upon which a determination can be made that an exemption would not unreasonably lower the vehicle's safety level.

Notice of receipt of the application was published on February 13, 1995 (60 FR 8275) and an opportunity afforded for comment. No comments were received.

Spartan is a Michigan corporation ''providing development electric vehicle technology through the application of state of the art traction system and battery technology in commercial applications.'' It intended to convert new Chevrolet S10 and GMC Sonoma pickup trucks to electric power. It sought exemption for two years from Federal Motor Vehicle Safety Standards Nos. 103, 105, and 301.

With respect to Standard No. 105, *Hydraulic Brake Systems*, Spartan wishes to be exempted from S5.1.1.3 (the third effectiveness test), S5.1.2.1 (partial failure), and S7.7.1, S7.9.1 and S7.9.2 (certain tests at lightly loaded vehicle weight). The curb weight of the vehicle is increased to approximately 4,500 pounds. The weight proportioning between axles is different than that used in the certification testing of the original vehicle. These changes affect the applicability of the testing requirements for lightly loaded vehicle weight. However, the GVWR remains the same as the original rating of 4,900 pounds, and the original vehicle's braking system is not modified. This, in the applicant's view, minimized ''the impact of the electric vehicle not meeting the standard.''

With respect to Standard No. 301 *Fuel System Integrity*, the applicant noted that ''a small tank'' is added ''for the on board storage of fuel for interior heating.''

On February 9, 1995, NHTSA wrote Spartan, asking it to provide further information. The agency noted that:

> ''* * * the curb weight of a converted vehicle has been increased to 4500 pounds, but that the GVWR remains at 4900 pounds. This means that the pickup truck will be overloaded if the total weight of passengers and cargo exceeds 400 pounds. The agency is concerned that a user of the converted pickup truck would reasonably assume that the vehicle has a much greater carrying capacity than it had in its unmodified form, and would therefore be likely to overload it. This suggests that the GVWR should be increased to a level more commensurate with the probable use of the conversion. This might require some increased capacity to the suspension, tires, and brakes, and possibly modifications to the frame as well. We would appreciate your comments on this issue * * *.''

The agency also asked for information on the capacity of the ''small tank'', and a statement, or diagram, indicating its location as installed. The agency asked for this information within 30 days of its receipt. Spartan did not respond. On May 5, 1995, an agency staff member telephoned Spartan to ask when a response might be received, and was informed that Spartan no longer intended to engage in electric vehicle conversions. Spartan was asked to submit a letter withdrawing its application so that the application could be mooted and the agency could close its files in this matter. To date, Spartan has not responded to this request either.

In consideration of the foregoing, it is hereby found that the petitioner has not met its burden of persuasion that the exemptions requested would not unreasonably degrade the safety of the vehicles to be exempted, and that an exemption would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301. Therefore, the application of Spartan Motors, Inc., for temporary exemption from Motor Vehicle Safety Standards Nos. 103, 105, and 301 is denied. This denial is without prejudice, and Spartan may file a new application in the future if it intends to engage in electric vehicle conversion.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on August 16, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–20728 Filed 8–21–95; 8:45 am]

BILLING CODE 49l0–59–P

DEPARTMENT OF THE TREASURY

Study and Report on the Consumer and Small Business Credit System

AGENCY: Department of the Treasury.

ACTION: Request for comment.

SUMMARY: The Department of the Treasury (Treasury) requests comment regarding the processes, and the effect of Federal laws on those processes, by which credit is made available for consumers and small businesses. This request for comment is issued in connection with a study required by the Riegle Community Development and Regulatory Improvement Act of 1994.

DATES: Comments should be submitted by September 12, 1995.

ADDRESSES: Comments should be directed to: Gordon Eastburn, Director, Office of Policy Planning and Analysis, Department of the Treasury, room 3025, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, Attention: Consumer Credit Study.

FOR FURTHER INFORMATION CONTACT: Gordon Eastburn, Director, Office of Policy Planning and Analysis, (202) 622–2730.

SUPPLEMENTARY INFORMATION:

Background

Section 330 of the Riegle Community Development and Regulatory Improvement Act, Pub. L. No. 103–225, 108 Stat. 2160, 2231 (1994) (the CDRI Act), requires the Secretary of the Treasury (the Secretary) to conduct a study of the process by which credit is made available to consumers and small businesses. The study is to be conducted in consultation with the Board of Governors of the Federal Reserve System (FRB), the Administrator of the Small Business Administration (SBA), the Secretary of Housing and Urban Development (HUD), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA).

The purpose of the study is to identify procedures and Federal laws that have the effect of:

(1) Reducing the amount of credit available (to consumers or small businesses) or the number of persons eligible for such credit;

(2) Increasing the level of consumer inconvenience, cost, and time delays in connection with the extension of consumer and small business credit without corresponding benefit in protecting consumers, small businesses, or the safety and soundness of insured depository institutions; and

(3) Increasing costs and burdens on insured depository institutions, insured credit unions, and other lenders, without corresponding benefit in protecting consumers, small businesses or the safety and soundness of insured depository institutions.

At the conclusion of the study, the Secretary is to submit a report to the Congress describing his findings and conclusions and recommending any administrative actions or statutory changes that he determines to be appropriate.

Finally, section 330 requires the Treasury to solicit comments from ''consumers, representatives of consumers, insured depository institutions, insured credit unions, other lenders, and other interested parties.'' *Id*. The Treasury is, accordingly, issuing this request for comment in order to learn the views of interested parties with respect to the process by which consumers and small businesses seek and obtain credit.

Request for Comment

Set forth below is a list of questions on which the Treasury specifically solicits commenters' views. The questions pertaining to the consumer and the small business credit systems are virtually identical but are separated into two discrete sections of this notice to facilitate responses from commenters who wish to respond only on one of the two topics.

The Treasury also invites comment regarding any aspect of the process, including any Federal laws, by which credit is made available for consumers and small businesses. Since one important purpose of the report is to offer recommendations for administrative or legislative change, commenters are encouraged to be as specific as possible in suggesting improvements to the consumer and small business credit systems.

Commenters are asked to identify the capacity or capacities (e.g., consumer representative, insured depository institution, small business, etc.) in which they are responding to this request. Moreover, commenters who choose to respond to one or more of the questions enumerated below are asked to identify the question by its number.

Questions on the Availability of Consumer Credit

The consumer lending process is affected by many Federal banking laws and the regulations that implement them. While these laws are generally intended to facilitate consumers' access to credit, they may also have the effect of increasing lenders' costs which can, in turn, inhibit or restrict credit availability.

Question (1). Please identify any consumer credit laws or implementing regulations that have a direct and significant effect on the consumer credit process. Examples include the items listed below. Commenters may also identify and comment on other Federal banking statutes and implementing rules not included on this list.

a. The Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) and Regulation B (12 CFR part 202);

b. The Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*) and Regulation C (12 CFR part 203);

c. The Fair Housing Home Loan Data System (12 CFR part 27) (applies only to national banks);

d. The Real Estate Settlement Procedures Act (12 U.S.C. 2601) and Regulation X (24 CFR part 3500) (disclosure provisions);

e. The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and Regulation Z (12 CFR part 226);

f. The Fair Credit Reporting Act (15 U.S.C. 1681); and

g. The National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.); 12 CFR part 22 (OCC); 12 CFR part 339 (FDIC); 12 CFR part 760 (NCUA); 12 CFR 563.48 (OTS); 12 CFR 208.8 (FRB).

For each law or regulation identified in response to Question (1), commenters are invited to address the following questions:

Question (2). What are the principal benefits of the law or regulation? What are its principal costs or burdens? Does the law or regulation impede consumers' access to credit? If so, how?

Question (3). Does this law or regulation duplicate, or overlap with, any other Federal law or regulation in a significant way?

Question (4). How could this law or regulation be changed to achieve its purpose in a way that is less costly or burdensome?

Lenders also adopt policies and establish procedures that are not required by statute or regulation but that nonetheless may have important effects on credit availability. Examples include the location of a lender's branches, its underwriting policies and procedures, and the ways in which it makes information about credit available to consumers.

Question (5). Please identify any significant non-statutory, non-regulatory policies or procedures used by lenders that impede the process of obtaining consumer credit or that limit or restrict consumer credit availability.

Question (6). Can the policy or procedure be modified to achieve the lender's objectives in a way that eliminates or reduces the restriction on consumer credit availability? If so, how?

Question (7). Are consumers adequately informed, through advertising or other means, about the availability of financial products and services? If not, please identify ways in which the flow of information to consumers could be improved.

There are other features of the overall Federal regulatory scheme that may affect credit availability. For example, the supervisory practices of the agencies that regulate lending institutions may have an impact on lending processes.

Question (8). Please identify any other aspects of the government's administration of Federal laws, regulations, or programs, or its oversight of the lending process, that limit or restrict the availability of credit to consumers. Include any specific suggestions for improvement in the way the agencies or departments involved in this study, as described above, manage their statutory responsibilities.

Questions on the Availability of Small Business Credit

Similarly, the small business lending process is affected by many Federal banking laws and the regulations that implement them. While these laws are generally intended to promote the safety and soundness of financial institutions and a competitive, efficient banking system, they may also have the effect of increasing lenders' costs or preventing consideration of new, but effective, credit delivery vehicles. These results can inhibit or restrict credit availability.

Question (9). Please identify any laws or implementing regulations that have a direct and significant effect on the small business credit process. Examples include the items listed below; commenters may also identify and comment on other Federal banking statutes and implementing rules not included on this list.

a. Lending Limits (12 U.S.C. 84) and 12 CFR part 32 (OCC); 12 CFR 563.93 (OTS);

b. Leasing (12 U.S.C. 24(Seventh)), (12 U.S.C. 24(Tenth)); 12 CFR part 23 (OCC);

c. National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.); 12 CFR part 22 (OCC); 12 CFR part 339 (FDIC); 12 CFR part 760 (NCUA); 12 CFR 563.48 (OTS); 12 CFR 208.8 (FRB);

d. Real Estate Lending Guidelines (12 U.S.C. 1828o; 12 CFR part 34, subpart D (OCC); 12 CFR part 208, subpart C (FRB); 12 CFR part 365 (FDIC); 12 CFR 563.101 (OTS); and

e. Real Estate Appraisals (12 U.S.C. 3331; 12 CFR part 34, subpart C (OCC); 12 CFR part 225 (FRB); 12 CFR part 323 (FDIC); 12 CFR parts 545, 563, and 564 (OTS).

For each law or regulation identified in response to Question (9), commenters are invited to address the following questions:

Question (10). What are the principal benefits of the law? What are its principal costs or burdens? Does the law or regulation impede small businesses' access to credit? If so, how?

Question (11). Does this law or regulation duplicate, or overlap with, any other Federal law or regulation in a significant way?

Question (12). How could this law or regulation be changed to achieve its purpose in a way that is less costly or burdensome?

Lenders also adopt policies and establish procedures that are not required by statute or regulation but that nonetheless may have important effects on credit availability. Examples include the location of a lender's branches, its underwriting policies and procedures, and the ways in which it makes information about credit available to consumers.

Question (13). Please identify any significant non-statutory, non-regulatory policies or procedures used by lenders that impede the process of obtaining small business credit or that limit or restrict small business credit availability.

Question (14). Can the policy or procedure be modified to achieve the lender's objectives in a way that eliminates or reduces the restriction on small business credit availability? If so, how?

Question (15). Are small businesses adequately informed, through advertising or other means, about the availability of financial products and services? If not, please identify ways in which the flow of information to small businesses could be improved.

There are other features of the overall Federal regulatory scheme that may affect credit availability. For example, the supervisory practices of the agencies that regulate lending institutions may have an impact on lending processes.

Question (16). Please identify any other aspects of the government's administration of Federal laws, regulations, or programs, or its oversight of the lending process, that limit or restrict the availability of credit to small businesses. Include any specific suggestions for improvement in the way the agencies or departments involved in this study, as described above, manage their statutory responsibilities.

Question (17). What specific revisions to the supervisory practices of the Federal banking agencies would allow lending institutions greater flexibility in managing the risks of small business lending (*e.g.*, expanding existing options for reviewing small business loans on a portfolio performance basis, rather than an individual loan basis).

Dated: August 11, 1995.

Richard S. Carnell,

Assistant Secretary of the Treasury.

[FR Doc. 95–20701 Filed 8–21–95; 8:45 am]

BILLING CODE 4810–25–M

Office of Thrift Supervision

Public Information Collection Requirements Submitted to OMB for Review

August 16, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Number: 1550–0011.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Title: General reporting and recordkeeping requirements.

Description: To provide the Office of Thrift Supervision with the means to determine the integrity of savings associations' records and operations when examining for safety, soundness, and regulatory compliance.

Estimated Number of Respondents/ Recordkeepers: 1512.

Estimated Burden Hours Per Respondent/Recordkeeper: 3145.14 avg. hrs.

Frequency of Response: On occasion.

Estimated Total Respondent/ Recordkeeping Burden: 4,755,465 hrs.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 95–20809 Filed 8–21–95; 8:45 am]

BILLING CODE 6720–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 14, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

OMB Number: Renewal

Form Number: OTS Form 248

Type of Review: Renewal of Existing Collection

Title: Annual Survey of Deposits; Deposit Balances by Office (Section L)
Description: This information collection provides data for each thrift office essential for analysis of market share of deposits that is required in evaluating the competitive impact of mergers, acquisitions, and branching applications on which OTS must act.
Respondents: Savings and Loan Associations and Savings Banks
Estimated Number of Respondents: 1,460
Estimated Burden Hours Per Respondent: 1 Hrs. Avg
Frequency of Response: Annually
Estimated Total Reporting Burden: 1460 Hrs.
Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, NW., Washington, D.C. 20552.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C. M. Teti,

Director of Records Management and Information Policy.

[FR Doc. 95–20712 Filed 8–21–95; 8:45 am]

BILLING CODE 6720–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 10, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC. 20552.

OMB Number: 1550–0078
Form Number: Not Applicable
Type of Review: Extension
Title: Real Estate Lending Standards
Description: This information collection requires thrifts to establish and document loan to value ratios for real estate loans. The information is used to facilitate OTS' evaluation of the institutions' safety and soundness in their lending practices.
Recordkeepers: Savings and Loan Associations and Savings Banks
Estimated Number of Recordkeepers: 1,500
Estimated Burden Hours Per Recordkeepers: 40 Hrs. Avg.
Frequency of Response: Once
Estimated Total Recordkeeping Burden: 60,000 Hrs.
Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, NW., Washington, DC. 20552.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC. 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 95–20711 Filed 8–21–95; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Information Collections Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Number: 2900–0051
Titles and Form Number: Quarterly Report of State Approving Agency Activities, VA Form 22–7398.
Type of Information Collection: Extension of a currently approved collection.
Needs and Uses: The form is used by State Approving Agencies to report work performed pursuant to the provisions of the yearly reimbursement contracts.
Affected Public: State, Local or Tribal Government.
Estimated Annual Burden: 240 hours.
Estimated Average Burden Per Respondent: 1 hour.
Frequency of Response: Quarterly.
Estimated Number of Respondents: 60 respondents.
OMB NUMBER: 2900–0101
Title and Form Number: Eligibility Verification Reports.
a. Old Law Eligibility Verification Report (Surviving Spouse), VA Form 21–0511S.
b. Old Law Eligibility Verification Report (Veteran), VA Form 21–0511V.
c. Section 306 Eligibility Verification Report (Surviving Spouse), VA Form 21–0512S.
d. Section 306 Eligibility Verification Report (Veteran), VA Form 21–0512V.
e. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Form 21–0513.
f. DIC Parent's Eligibility Verification Report, VA Form 21–0514.
g. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Form 21–0516.
h. Improved Pension Eligibility Verification Report (Veteran With Children), VA Form 21–0517.
i. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Form 21–0518.
j. Improved Pension Eligibility Verification Report (Child or Children), VA Form 21–0519C.
k. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Form 21–0519S.

Type of Information Collection: Extension of a currently approved collection.
Needs and Uses: The forms are used to verify continued eligibility for pension and parent's Dependency and Indemnity Compensation (DIC) and to determine whether adjustments in the rate of payment are necessary. These forms are also used by VBA for developing supplemental income and estate information from claimants who have previously filed a formal application for pension or parent's DIC.
Affected Public: Individuals or households.
Estimated Annual Burden: 406,250 hours.
Estimated Average Burden Per Respondent: 30 minutes per form.
Frequency of Response: Semi-annually.
Estimated Number of Respondents: 325,000 respondents.

ADDRESSES: Copies of these submissions may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer on or before September 21, 1995.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 565–4412.

Dated: August 10, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–20709 Filed 8–21–95; 8:45 am]

BILLING CODE 8320–01–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 162

Tuesday, August 22, 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).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 21, 28, and September 4, 1995.
PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.
STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of August 21

Tuesday, August 22

10:00 a.m.
Briefing on Changes to the Performance Indicator Program (Public Meeting)
(Contact: Steve Mays, 301–415–7496)
11:30 a.m.
Affirmation Session (Public Meeting)
(Please Note: These items will be affirmed immediately following the conclusion of the preceding meeting.)
a. Final Amendment to 10 CFR Part 50, Appendix J, ''Containment Leakage Testing,'' to Adopt Performance-Oriented and Risk-Based Approaches (Tentative)
b. Curators of the University of Missouri Licensee's Petition for Reconsideration (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Week of August 28—Tentative

Wednesday, August 30

11:30 a.m.
Affirmation Session (Public Meeting)
a. Revisions to Regulatory Requirements for Reactor Pressure Vessel Integrity in 10 CFR Part 50 (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Week of September 4—Tentative

There are no meetings scheduled for the Week of September 4.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley A. Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: August 18, 1995.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–20938 Filed 8–18–95; 4:30 pm]

BILLING CODE 7590–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, August 28, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of check image system within the Federal Reserve System. (This item was originally announced for a closed meeting on August 16, 1995.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 18, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–20936 Filed 8–18–95; 3:55 pm]

BILLING CODE 6210–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATES: 9:30 a.m., Wednesday, August 30, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6519B—Aviation Accident Report: Runway Collision Involving TWA Flight 427 and Superior Aviation Cessna 441, Bridgeton (St. Louis), Missouri, November 22, 1994
6538A—Aviation Accident Report: Inflight Loss of Control Involving Air Transport International Flight 782, Kansas City, Missouri, February 16, 1995

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: August 18, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–20884 Filed 8–18–95; 2:53 pm]

BILLING CODE 7533–01–P

federal register

Tuesday
August 22, 1995

Part II

Environmental Protection Agency

40 CFR Part 148 et al.

Land Disposal Restrictions—Phase IV: Issues Associated With Clean Water Act Treatment Equivalency, and Treatment Standards for Wood Preserving Wastes and Toxicity Characteristic Metal Wastes; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 268, and 271

[EPA530–Z–95–011; FRL–5280–6]

RIN 2050 AE05

Land Disposal Restrictions—Phase IV: Issues Associated With Clean Water Act Treatment Equivalency, and Treatment Standards for Wood Preserving Wastes and Toxicity Characteristic Metal Wastes

AGENCY: Environmental Protection Agency (EPA, the Agency).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is addressing issues arising from the September 25, 1992 decision of the U.S. Court of Appeals in *Chemical Waste Management* v. *EPA*, 976 F. 2d (D.C. Cir. 1992) on the equivalency of treatment in wastewater treatment systems regulated under the Clean Water Act (CWA) to treatment required by the Resource Conservation and Recovery Act (RCRA). Specifically, the Agency is considering whether to regulate potential releases, to air or ground water, of hazardous constituents from surface impoundments treating wastes that were hazardous when generated, but have been diluted to render them nonhazardous. Such wastes are prohibited from land disposal unless adequately pretreated.

In addition, EPA is proposing treatment standards under the land disposal restrictions (LDR) program for wastes from wood preserving operations and for Toxicity Characteristic (TC) metal wastes. These treatment standards, when finalized, must be met in order to land dispose these hazardous wastes.

These potential requirements and treatment standards must be proposed by August 11, 1995 to satisfy the terms of a proposed consent decree and a settlement agreement.

Today's proposal also includes simplified land disposal requirements, streamlined state authorization procedures, a proposal not to ban ''nonamenable'' wastes from treatment impoundments, and discussion of a possible exclusion from regulations for certain recycled wastes from wood preserving operations.

DATES: Comments on this proposed rule must be submitted by November 20, 1995.

ADDRESSES: The public must send an original and two copies of their comments to Docket Number F–95–PH4P–FFFFF, located in the EPA RCRA Docket, U.S. Environmental Protection Agency, room 2616, 401 M Street, SW., Washington, DC 20460. (Also see the section under **SUPPLEMENTARY INFORMATION:** regarding the paperless office effort for submitting public comments.) The RCRA Docket is open from 9:00 am to 4:00 pm 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 FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll-free) or (703) 412–9810. For specific information, contact the Waste Treatment Branch (5302W), Office of Solid Waste (OSW), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; phone (703) 308–8434. For technical information regarding standards for Clean Water Act (CWA) systems, ask for Mary Cunningham or Elaine Eby; for technical information on the treatment standards for wood preserving wastes, ask for Jose Labiosa; for TC metal wastes, ask for Anita Cummings. For policy questions, ask for Sue Slotnick. For questions on the clean-up of the Part 268 regulations, ask for Douglas Heimlich. For information on the capacity analyses, ask for Pan Lee of the Capacity Programs Branch (OSW), phone (703) 308–8440. For information on the regulatory impact analyses, contact Linda Martin of the Regulatory Analysis Branch (OSW), phone (202) 260–0062.

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'' campaign. For further information on the submission of diskettes, contact the Waste Treatment Branch at the phone number listed above.

Glossary of Acronyms and Terms

BDAT—Best Demonstrated Available Technology
CAA—Clean Air Act
CWA—Clean Water Act
EP—Extraction Procedure
HSWA—Hazardous and Solid Waste Amendments (to RCRA)
ICR—ignitable, corrosive, and reactive wastes, *or*, Information Collection Request *(in section XI.D.)*
ICRT—ignitable, corrosive, reactive, and toxic characteristic wastes
ICT—ignitable, corrosive, and toxic characteristic wastes
LDR—Land Disposal Restrictions
MCL—Maximum Contaminant Level
MSW—Municipal Solid Waste
MSWLF—Municipal Solid Waste Landfill
NESHAP—National Emission Standards for Hazardous Air Pollutants
NPDES—National Pollutant Discharge Elimination System
OCPSF—Organic Chemicals, Plastics, and Synthetic Fibers industry
ppmw—parts per million by weight
RCRA—Resource Conservation and Recovery Act
TC—Toxicity Characteristic
TCLP—Toxicity Characteristic Leaching Procedure
UHC—underlying hazardous constituent
UTS—Universal Treatment Standards
VOCs—volatile organic compounds

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I. Options to Ensure That Underlying Hazardous Constituents in Decharacterized Wastes are Substantially Treated Rather Than Released Via Leaks, Sludges, and Air Emissions from Surface Impoundments

A. Summary

EPA's recently proposed Phase III LDR rule (60 FR 11702, March 2, 1995), addressed wastewater discharges involving characteristic wastes that are deactivated through dilution and treated in surface impoundments. The Phase III rule proposed treatment standards that can be met at or prior to the point of discharge, (also referred to as ''end-of-pipe''). Today's proposed rule addresses whether such treatment in surface impoundments results in cross-media releases, via leakage, air emissions, or disposal of untreated sludges, that can be so excessive that the impoundment effectively functions as a disposal unit.

The Agency is essentially examining standards for air emissions, leaks to ground water, sludges, and wastewater discharges (proposed in Phase III) at the same time. This provides an opportunity to comprehensively examine all the risks, applicable treatment technologies, benefits, costs, and existing regulatory controls associated with addressing decharacterized wastes that are treated in surface impoundments. EPA received public comments to the Phase III rule, but because of scheduling constraints, was not able to fully review them before issuing this notice. Decisions on controlling releases will be made after careful consideration of public comments on both proposals. The Agency may choose either to not promulgate LDR requirements for these releases, or to set management standards when warranted by excessive cross-media transfer of hazardous constituents. A third option is to require that decharacterized wastes be treated (not merely diluted) to meet Universal Treatment Standards (UTS) before entry into surface impoundments. EPA is not in favor of the third option, as it is likely to disrupt treatment needed for compliance with the Clean Water Act (CWA) limitations and standards, and impose high costs without targeting risks adequately.

B. Background

In the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), Congress prohibited land disposal of hazardous waste unless the waste meets treatment standards established by EPA. The statute requires that these treatment standards substantially diminish the toxicity or mobility of hazardous waste such that short- and long-term threats to human health and the environment are minimized. RCRA section 3004(m). In response, EPA has developed a series of rulemakings under the Land Disposal Restrictions (LDR) Program setting forth standards for treatment of hazardous waste.

The Third Third rule (55 FR 22520, June 1, 1990) contained treatment standards and prohibitions for hazardous wastes that exhibited one or more of the following characteristics: Ignitability, corrosivity, reactivity, or Extraction Procedure (EP) toxicity (40 CFR 261.21–261.24). The Agency also established a ''deactivation'' treatment standard for ignitable, corrosive, and reactive (ICR) wastes. Under this standard, ICR wastes could be diluted until they no longer exhibited the hazardous characteristic (i.e., the waste was ''deactivated''). Once deactivated, these wastes could be placed in land disposal units without further treatment, unless the Agency specifically required that hazardous constituents in the waste be treated. The Agency further established that prohibitions on dilution did not apply to most characteristic wastes that are decharacterized by dilution and then managed in disposal units subject to regulation under the CWA or the Safe Drinking Water Act.

These portions of the rule were partially vacated and remanded in *Chemical Waste Management* v. *EPA*, 976 F. 2d 2, cert. denied 113 S.Ct. 1961 (1992). In *CWM* v. *EPA*, the court held that wastes decharacterized by dilution may be placed in a nonhazardous surface impoundment or a nonhazardous injection well only if the toxic constituents in that waste are treated to the same extent as they would be under the treatment standards mandated by RCRA section 3004(m)(1). 976 F. 2d at 23. In other words, treatment standards must result in the treatment of all toxic constituents (i.e., the underlying hazardous constituents, or UHCs) to minimize threats to human health and the environment. Treatment that only removes the hazardous characteristic does not necessarily suffice.

The principal holdings of *CWM* v. *EPA* with respect to characteristic wastes were 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 threats posed by

hazardous wastes, as well as removal of the characteristic property, *id*. at 16, 17, 23; as a result, dilution is permissible as an exclusive method of treatment only for those characteristic wastes that do not contain UHCs ''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, no longer exhibit a characteristic(s), and are then managed in centralized wastewater management land disposal units (i.e., subtitle D surface impoundments or injection wells) are legal only if it can be demonstrated that hazardous constituents are reduced, destroyed, or immobilized to the same extent as they would be pursuant to otherwise-applicable RCRA treatment standards, *id*. at 7. EPA refers to this as the ''equivalency determination'' and it is at the heart of the discussion of potential cross-media transfers in today's rule. The court further held that the deactivation treatment standard for ignitable and corrosive wastes (which allowed the hazardous characteristic to be removed by any type of treatment, including dilution) did not fully comport with RCRA section 3004(m). This was because the deactivation treatment standard could be achieved by dilution, and section 3004(m) ''requires that any hazardous waste be treated in such a way that hazardous constituents be removed from the waste before it enters the environment.'' 976 F. 2d at 24. The court thus remanded the rules dealing with centralized wastewater management involving land disposal.

EPA addressed one portion of the equivalence issue when it proposed the Phase III LDR rule (60 FR 11702, March 2, 1995). That rule proposes, among other things, treatment standards for the end-of-pipe discharges from surface impoundments to surface waters or POTWs. For further information on the court decision and the Agency's responses, see the January 19, 1993, Notice of Data Availability (58 FR 4972) and Supplementary Information Report; the LDR emergency Interim Final rule (58 FR 29860, May 24, 1993); the LDR Phase II rule (59 FR 47982, September 19, 1994); and the LDR Phase III proposed rule (60 FR 11702, March 2, 1995).

The Agency entered into a settlement agreement setting out a schedule for fulfilling the court's mandate. The settlement agreement reads:

> EPA agrees to sign a proposed rulemaking on the issue of equivalency of treatment in a CWA system that uses surface impoundments . . . EPA agrees to describe in detail in that notice of proposed rulemaking (but not necessarily recommend or endorse) the following option: regulations limiting release from surface impoundments used in CWA treatment systems of hazardous constituents from ICT wastes managed in such impoundments, where the release is due to volatilization or leakage, and treatment standards under section 3004(m) for hazardous constituents from ICT wastes in impoundment sludges. After considering any public comments received, EPA agrees to sign a notice of final rulemaking taking final action on the issue and option * * *

Therefore, the Agency is required to address these issues at this time although there may have been higher environmental priorities if EPA had sole discretion to order its agenda.

The central legal and policy issue addressed in this proposal is if and when releases of hazardous constituents from surface impoundments which are part of a treatment train for decharacterized wastes are so extensive as to effectively invalidate the treatment process as a means of LDR compliance. Put another way, the D.C. Circuit intended to allow continued use of treatment surface impoundments to treat decharacterized wastes, provided the extent of treatment is equivalent to usual RCRA treatment. If there are releases of hazardous constituents to the environment before treatment concludes, in the form of air releases, leaks to ground water, or deposition in sludges, has permanent disposal occurred so as to invalidate the treatment process?

EPA's view is that, at the least, something more than the bare release of a hazardous constituent is needed to trigger this invalidation. The court did not explicitly state that its equivalence test, or any other part of the opinion, necessitated control of all hazardous constituent releases from surface impoundments. For example, one of the court's formulations of its holding is that ''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. The focus here is on the wastewaters being treated, and the amount of hazardous constituents removed from those wastewaters, not other types of wastes (like sludges) or other types of releases. See also *id*. at 7, 20 (focus on treatment of waste ''streams'', i.e. liquids in an impoundment); 23 n. 8 (reduction of mass loadings of hazardous constituents of wastestream entering and exiting an impoundment); 24 (court indicates that decharacterized wastes are not held permanently in impoundments, which is true of wastewaters but not for all wastewater treatment sludges).

The court likewise did not see that hazardous constituents in deposited sludges must be treated. The court in fact did not speak to the principle stated by EPA in the Third Third rule that generation of a new treatability group is considered to be a new point of generation and thus a new point for determining whether a waste is prohibited. 55 FR at 22661–662. Under this principle, unchallenged in the litigation, wastewater treatment sludges not exhibiting a characteristic are not prohibited wastes, notwithstanding that they may derive from prohibited wastewaters.

Perhaps more fundamentally, the court clearly did not intend to require that treatment standards be met invariably by treatment preceding impoundment-based management systems: ''RCRA requires some accommodation with [the] Clean Water Act''. 976 F. 2d at 20; see also *id*. at 23, indicating that to some degree RCRA need not mandate wholesale disruption of existing wastewater treatment impoundments, providing the CWA treatment system really achieves treatment equivalent to RCRA's: ''In other words, what leaves a CWA treatment facility can be no more toxic than if the wastestreams were individually treated pursuant to the RCRA treatment standards.'' A draconian reading that any releases of hazardous constituents from a treatment impoundment effectively invalidate that impoundment's treatment operations could thwart the court's holding that such treatment is to be allowed provided equivalent treatment occurs.

There are suggestions in the opinion, however, that at some point the LDR standard is not satisfied if the magnitude of hazardous constituent releases is sufficiently great. The whole thrust of the opinion is to assure that RCRA treatment requirements are not thwarted by cross-media transfers of untreated hazardous constituents, whether by dilution or by escape from treatment units. *Id*. at 22, 24, 29–30; see also *id*. at 17, 18 vacating treatment standards for ignitable and reactive wastes because the Agency had done nothing to address the risk of excessive volatilization or reactivity during the treatment process. The court also 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, or from inadequately treated sludges, it can be argued that permanent disposal of untreated hazardous constituents is occurring, although, since no treatment unit is absolutely release-free (there are certainly releases of hazardous constituents from combustion units, for example), the more fruitful inquiry is the extent of the release.

Putting this together, EPA initially believes the best reading of this part of the opinion to be to distinguish between impoundments performing essentially as treatment units from those that are also operating as permanent disposal units due to the extent of cross-media transfers of untreated hazardous constituents. The portion of the opinion vacating standards for ignitable and reactive wastes supports such a reading, since the court required the Agency to find ''that the risk of * * * emissions * * * is minimal, or * * * require actions to minimize that risk.'' 976 F. 2d at 17, thus focusing on the extent of release from the treatment unit, not just the fact that a release occurred. Under this reading, the Agency could evaluate whether the risk from the various types of releases is great enough to warrant control. A finding that there is insufficient risk would mean that the impoundment is not engaging in a type of cross-media transfer of untreated hazardous constituents that invalidates its treatment function, and therefore that decharacterized wastes can be treated in the impoundment to effect the necessary accommodation between RCRA and the CWA.

A second pervasive distinction in the opinion is between treatment units (including treatment surface impoundments) and permanent disposal units, accommodation to allow centralized wastewater management being allowed for the former but not the latter. See, e.g., 976 F. 2d at 24, 25. There are some potential differentiations among types of surface impoundments along these lines. A common division of wastewater treatment is into primary, secondary, and tertiary treatment. Primary treatment involves removal of conventional pollutants (e.g., oil and grease, total suspended solids) or equalization. Secondary treatment involves aggressive treatment steps to remove or destroy hazardous constituents, examples being biological treatment for organics, or chemical precipitation for metals. Tertiary treatment involves polishing effluent before final discharge. Impoundments engaged in primary treatment most clearly resemble hazardous constituent disposal units because such units treat hazardous constituents only incidentally. Secondary and tertiary impoundments, on the other hand, do engage in significant treatment of hazardous constituents. Thus, possible Phase IV controls would logically be directed at primary impoundments, the type of wastewater management impoundment most resembling permanent disposal due to the lesser degree of treatment occurring in the unit.

It is also possible to argue that any leak to ground water or deposition of hazardous constituents in sludge at levels exceeding the UTS (or some comparable release of hazardous constituents to air) renders treatment across a wastewater treatment system not equivalent. EPA does not view this reading as compelled. There is no such explicit language in the opinion. As already stated, such a reading also would likely destroy the very accommodation between RCRA and the CWA the court deemed necessary. Nor would such a reading make policy sense if releases from treatment surface impoundments remain insignificant, and the treatment system is in fact achieving the same mass reductions of hazardous constituents, through destruction and removal rather than through release, as conventional RCRA treatment (see 976 F. 2d at 23 n. 8).

EPA's present, preferred reading of the opinion is consequently to establish the parameters which distinguish permanent land disposal impoundments from those performing the type of treatment to be accommodated under the court's opinion. These parameters can be defined by limiting the extent of hazardous constituent releases to air, ground water and through sludges to levels that do not pose significant risk. In addition, primary treatment impoundments are the most natural target for these controls.

C. Applicability of Potential Approaches to ''Industrial D'' Management Units

Today's options to address surface impoundment releases specifically apply to Subtitle D (nonhazardous) surface impoundments that receive decharacterized wastes. Subtitle D surface impoundments that do not manage decharacterized wastes are not affected. The options in today's proposal do not necessarily set a precedent for any future regulations concerning non-hazardous industrial wastes. The Agency, in partnership with the States, is investigating the possibility of developing voluntary standards for the safe management of non-hazardous industrial wastes.

D. Potentially Affected Industries

Based on an analysis of available information, the Agency estimates that 300 facilities are managing, in CWA treatment systems, decharacterized wastes containing hazardous constituents above UTS. (Hereafter, the use of the term ''CWA treatment systems'' includes CWA-equivalent systems as defined by 40 CFR 268.37, and other nonhazardous waste surface impoundments.) Wastewater treatment in surface impoundments involves three basic functions:

- Equalization/settling (known as primary or prebiological treatment);
- Biological treatment (known as secondary treatment); and
- Postbiological settling/polishing (known as tertiary or postbiological treatment).

Equalization/settling ponds settle solids out of the wastewaters and equalize concentrations to subsequent treatment units. Being the first units in the system to receive the wastewaters, they receive the highest loadings of contaminants.

Biological treatment units function primarily to break down or remove organic compounds in the wastewater. At this point in the treatment process, the concentrations of organics in the surface impoundment are greatly reduced, and therefore, the risks from leaks and sludges are considerably lower in these units. Part of the concentration reduction, however, is due to volatilization, and air emissions can be significant from such units.

Postbiological treatment units will receive contaminants at significantly reduced concentrations. As a result, lower concentrations of hazardous constituents can be expected in the air emissions, leaks, and sludges, and therefore resultant risks are also lower.

E. Results of Sampling and Risk Assessment

1. Sampling Data

The Agency reviewed available information on air emissions, leaks, and sludges. These data were collected for the development of effluent guidelines under the CWA. They cover industries that typically treat wastewater in biological treatment systems that incorporate surface impoundments. During the last two years, the Agency was informed by representatives of the regulated industry that they would provide EPA with more current and complete data characterizing wastewaters in surface impoundments receiving decharacterized waste. At the time of publication of this proposal, EPA had not received any such data.

Information available to the Agency indicates that decharacterized wastestreams containing UHCs may leak out of surface impoundments at levels of concern. These data also indicate that there may be a significant number of wastestreams that could exceed the regulatory threshold for total volatile organics. In addition, the Agency conducted a review of the chemical concentrations of UHCs in decharacterized wastes (based on the effluent guidelines data) and the concentrations of constituents of concern in various RCRA F and K wastewaters. Based on this analysis, the Agency found that in many instances that decharacterized wastestreams have similar hazardous constituents present and at similar concentrations as listed hazardous wastestreams. Estimated sludge concentrations based on industrial wastewater treatment system data indicate that surface impoundments handling decharacterized wastes are likely to generate sludge that contain UTS constituents in excess of the treatment standards. EPA solicits additional data, particularly constituent concentrations from actual sampling of wastewaters in surface impoundments receiving decharacterized wastes. A detailed discussion of the data sources, analyses, and specific examples of releases above UTS levels supporting this proposal can be found in the document entitled, ''Technical Support Document—Options for Management Standards for Leaks, Sludges, and Air Emissions From Surface Impoundments Accepting Decharacterized Wastes'' which is located in the RCRA docket.

2. Risks

Although the wastes affected by the court opinion and the equivalence options in this section of the preamble are not hazardous wastes, they are likely to contain some of the same hazardous constituents, possibly even at the same levels, as are found in listed and characteristic wastes. The hazardous constituents in listed and characteristic wastes must be treated to meet UTS before land disposal.

EPA conducted a screening level risk assessment that did not take into account site-specific hydrogeologic conditions or relative proximity of drinking water wells to surface impoundments. Using the sampling data described above, EPA estimated baseline (current) risks from releases from leaks and air emissions, as well as ground water contamination from sludge disposal. Samples were taken at: raw wastewater, equalization ponds, influent to pre-bio ponds, pre-bio ponds, effluent from pre-bio ponds, influent to biological ponds, effluent from biological ponds, effluent from post-bio ponds, influent to wastewater system, and effluent from wastewater system. (The terms ''pond'' and ''surface impoundment'' are used interchangeably in this preamble.) Using Office of Water Effluent Guidelines data, EPA calculated central tendency and high-end baseline risks from leaks and sludges for wastewater treatment systems in five industries: Pharmaceuticals; Pulp and Paper; Pesticides; Metal Products and Machinery; and Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF). Using Generator Survey point-of-generation data, EPA calculated central tendency and high-end baseline risks from leaks and sludges for wastewater treatment systems from Inorganic Chemicals; and, Electronic and Electrical Components. The Agency used standard exposure assumptions of 1.4 liters/day ingestion, and a 9-year exposure period for 350 days per year. Cancer risks are summed across constituents.

Following are the highest risks EPA estimated. These risks are from pre-biological surface impoundments unless otherwise noted. (The samples from influent to a biological pond are assumed to be measures of constituent concentrations of wastewaters in pre-bio ponds rather than bio ponds.) For the central tendency analysis of risks from leaks, EPA found potentially significant health risks in the Pharmaceuticals, OCPSF, Inorganic Chemicals, and Electronic and Electrical Components industries. In the Pharmaceuticals industry, one raw wastewater sample out of 11 and one biological pond influent sample out of 7 may pose potentially significant cancer health risk exceeding the 10^{-5} cancer risk threshold; methylene chloride and acrylonitrile, respectively, are the constituents of concern. In the OCPSF industry, EPA found three raw wastewater samples out of 51 indicate cancer risks in excess of a 10^{-5} individual lifetime cancer risk level. Acrylonitrile is the most prevalent carcinogenic constituent in amounts above levels of concern. Also in the OCPSF industry, nine samples at the biological pond influent out of 34 at the biological pond influent indicate cancer risks in excess of a 10^{-5} level, of which six samples indicate cancer risks in excess of 10^{-4}. In the Inorganic Chemical industry, one point of generation sample out of 51 may pose potentially significant cancer health risks in excess of the 10^{-5} cancer risk threshold, and one point of generation sample exceeds the 10^{-4} cancer risk threshold. Methylene chloride and beryllium are the constituents of concern. In the Electric and Electrical Components industry, 32 point of generation samples contain potentially significant cancer health risks in excess of 10^{-5}, of which 13 samples present cancer risk between 10^{-4} to 10^{-5}; 11 samples present cancer risk between 10^{-3} to 10^{-4}; and, 8 present cancer risk in excess of 10^{-3}. Methylene chloride and beryllium are the constituents of concern. The Agency continues to evaluate additional industries based on available data. The risk analyses for these data will be placed in the RCRA docket for this proposal.

In its analysis of leaks using high-end assumptions, EPA found potentially significant health risks (above 10^{-5}) at sampling points in the Pharmaceuticals, Pesticides, Pulp & Paper, OCPSF, Inorganic Chemicals, and Electronics and Electrical Components industries. In the Pharmaceuticals industry, 14 samples out of 38 at the raw wastewater, equalization pond, biological pond influent, and effluent from post-biological ponds (a measure of risk from a post-bio pond) present potentially significant cancer health risks in the range of 10^{-3} to 10^{-5}; constituents of concern include methylene chloride, acrylonitrile, chloroform, 1,2-dichlorethane and alpha-bhc. In the Pesticides industry, three samples out of 11 at the influent to a pre-bio pond exceed the 10^{-5} cancer risk threshold; the constituent of concern for all three samples is methylene chloride. In the Pulp & Paper industry, three samples of 12 at the influent to the wastewater treatment system and one sample of 15 at the effluent from the wastewater treatment system (sample from a bio or post-bio pond) may pose potentially significant sources of cancer risk (estimates in the range of 10^{-4} to 10^{-5}); constituents of concern are chloroform, 1,2-dichloroethane, 1,1,2,2 tetrachloroethane and bis (2-ethylhexyl) phthalate at the influent and methylene chloride and chloroform at the effluent. In the OCPSF industry, about one-third (20 of 51) samples of the raw wastewater samples present cancer risks in excess of 10^{-5}. One half (9 samples) present cancer risks in excess of 10^{-4}. About one-third (13 of 34) of the biological pond influent samples indicated cancer risks in excess of 10^{-5}; all samples but one indicated cancer risks in excess of 10^{-4}. In the Inorganic Chemicals industry, two point of generation samples present potentially significant cancer health risk in excess of 10^{-3};

methylene chloride and beryllium are the constituents of concern. Finally, in the Electronics and Electrical Components industry, 11 point of generation samples (out of 295) present potentially significant cancer health risk in excess of 10^{-4}; 21 samples present cancer health risk in excess of 10^{-3}; methylene chloride and beryllium are the constituents of concern.

For sludges, EPA estimated the risks from disposal in an unlined, nonhazardous landfill after the sludges are dredged from a surface impoundment. Using estimated sludge concentrations in the OCPSF industry, EPA conducted both a central tendency and high-end analysis. In the central tendency analysis, one pre-bio sample (of 87) presents cancer risk in excess of 10^{-4} and one bio sample (of 74) presents risk in excess of 10^{-5}; acrylonitrile is the constituent causing both exceedances. In the high-end analysis, two pre-bio samples (of 87) present cancer risk in excess of 10^{-5}; and one bio sample (of 74) presents cancer risks in excess of 10^{-4}; acrylonitrile and 1,4-dichlorobenzene are the causes.

To assess the potential risk posed by air emissions, EPA examined samples at the point of generation of the wastewater. Across all industries, one-fifth of samples (290 to 363 of 1562 samples) exceed 100 parts per million (ppmw) by weight of volatile organic compounds (VOCs). Under the recent RCRA Subpart CC final standards, air emission control requirements of the rule apply to affected units if hazardous waste placed in the unit is determined to have an annual average volatile organic concentration equal to or greater than 100 ppmw based on the organic composition of the hazardous waste at the point of waste origination. See § 264.1083 (promulgated at 59 FR 62928 (December 6, 1994)). Preliminary results show that 15 percent of samples (87 to 117 of 690 samples) from the Pharmaceutical, Pulp and Paper, Pesticide, and Metal Product and Machinery industries exceed 100 ppmw. In the OCPSF industry, 48 to 59 percent of the sample facilities (75 to 92 of 157 facilities) assessed had at least one sample of wastewater that exceeded the 100 ppmw limit. For a detailed discussion of risks and regulatory impacts, see the background document ''Regulatory Impact Analysis of the Proposed Phase IV Land Disposal Restrictions Rule,'' which was placed in the docket for today's proposed rule.

F. Overview of Options

In general terms, the risks due to cross-media releases have the potential to vary from insignificant to significant. EPA is considering three types of options for addressing this issue. The first option is not to issue LDR requirements, but rather to rely on other Agency programs to address these releases under current rules or future efforts (i.e., Clean Air Act (CAA) standards, RCRA Corrective Action, State programs, and others). The second option is to develop controls that focus on the subset of situations that pose excessive risk and are not addressed by existing requirements or those under development. Finally, the third option is to require that decharacterized wastes be treated (not merely diluted) to meet Universal Treatment Standards (UTS) before entry into surface impoundments. This forces modification at facilities that do, as well as those that do not, pose risks from leaks, air emissions, and sludges. None of the options would apply to units which satisfy the Minimum Technology Requirements or the statutory no-migration standard.

The Agency is neutral between the first and second options. The second option is necessarily more complicated than the other two, and so is discussed here at greater length; it should not thereby be inferred that this is EPA's preferred approach. The third option was also considered, but EPA is not recommending it because of potential disruption to needed wastewater treatment, high costs to affected industries, and lack of targeted risk reduction.

G. Option 1

Option 1 relies on the Phase III rule to satisfy the equivalence standard enunciated by the D.C. Circuit. As noted, that rule would link LDR and CWA end-of-pipe standards to assure that mass removal of UHCs occurs to the same extent in CWA impoundment-based treatment systems as it does in conventional RCRA treatment systems. As discussed above, the court's opinion does not explicitly require more.

If ostensible treatment impoundments generally acted as conduits for extensive cross-media transfers of untreated hazardous constituents, it is not clear that the standard enunciated by the court would be satisfied. However, there are existing or forthcoming regulatory mechanisms which tend to protect against such wholesale releases.

Following is a brief description of what coverage federal and State regulations may provide to control excessive releases from surface impoundments receiving decharacterized wastes. For more information, see the following in the RCRA Docket: ''Technical Support Document—Options for Management Standards for Leaks, Sludges, and Air Emissions From Surface Impoundments Accepting Decharacterized Wastes,'' and the Executive Summary of the ''Regulatory Impact Analysis of the Proposed Phase IV Land Disposal Restrictions Rule.''

The Toxicity Characteristic (TC), which exists for 39 of the 212 UHCs, cannot be exceeded in the wastewater or sludges contained in the surface impoundments, and therefore, provides some control. See, e.g. 976 F.2d at 24 fn. 10. Also, approximately 42% of the facilities with impoundments which receive decharacterized wastes are RCRA Treatment, Storage, or Disposal Facilities (TSDFs). RCRA TSDFs have at least one unit at the facility which requires a RCRA Subtitle C permit. Under RCRA § 3004(u), the primary cleanup authority for permitted TSDFs, releases of hazardous constituents from solid waste management units at such facilities are subject to corrective action. TSDFs that have not yet received permits, and are operating under interim status, are subject to cleanup under § 3008(h), which provides EPA with similar authority to compel corrective action. Surface impoundments affected by today's proposed rule are solid waste management units; releases from these impoundments are subject to corrective action on a site-specific basis. While the State or EPA has the authority to control emissions from Subtitle D surface impoundments at Subtitle C TSDFs not only during corrective action, but also during normal operations, they may choose not to do so, primarily because of priorities, resources, and perceived risk.

EPA also is presently implementing Section 112 of the CAA to impose technology-based standards for hazardous air pollutants at enumerated major sources, requiring control by means of Maximum Available Control Technology (MACT). These rules are subject to explicit deadlines, and already address wastewater treatment impoundments in certain industries potentially affected by the Phase IV rule (e.g. the Hazardous Organics National Emission Standards for Hazardous Air Pollutants (NESHAP) at 59 FR 19402, April 22, 1994), or will address such impoundments. Several rules have been promulgated addressing air emissions from portions of the hazardous of the organic, benzene, chromium electroplating, ethylene oxide, halogenated solvent, polymers and resins, petroleum, and ferroalloy industries. Examples of forthcoming

standards are the MACT for the pharmaceutical industry and the pulp and paper industry. In addition, NESHAPs that may affect portions of the petroleum, metal plating, organic chemical and inorganic chemical industries are scheduled for promulgation in 1995 and 1996. EPA believes, however, that some surface impoundments in the potentially affected universe of industries will not be covered by these CAA regulations. For a detailed description of coverage by CAA rules, see the Table entitled ''NESHAP Programs Identified in Semiannual Regulatory Agenda'' in the ''Technical Support Document—Options for Management Standards for Leaks, Sludges, and Air Emissions From Surface Impoundments Accepting Decharacterized Wastes,'' and see also the background document entitled ''Description of Process to Determine the Potentially Affected Universe for the Phase IV LDR Rule.''

With regard to other on-going efforts, EPA is actively investigating whether to list additional wastes as hazardous, and is investigating the possibility of developing voluntary guidelines for Subtitle D facility standards that would more broadly address non-hazardous industrial wastes.

In addition to federal controls, some States have environmental controls on surface impoundments that receive nonhazardous industrial waste, such as ground water monitoring for hazardous constituents, leachate collection systems, sludge management programs, and cleanup authorities. Thirty-six States have at least some regulations that may be relevant to the cross-media concerns in this rule. Among those States, requirements to prevent ground water contamination from surface impoundments vary considerably. States with the most requirements include such controls as specific liner requirements, leachate collection and removal systems, ground water monitoring, closure and post-closure plans, corrective action, and permits. In contrast, States with less comprehensive programs may require only two or three of these requirements, or may apply them only to dischargers, only to non-dischargers, or in other ways limit the applicability of their programs. However, EPA does not have information on key factors to help it assess the degree to which State programs can be relied upon to prevent excessive releases from surface impoundments via leakage. For example, it is not known which constituents are monitored, what concentrations are considered acceptable levels, or whether the State requirements mentioned above apply to existing units, or only to new ones. For a more detailed assessment of how State programs protect ground water from contamination from the type of surface impoundments at issue in this rule, see ''Technical Support Document—Options for Management Standards for Leaks, Sludges, and Air Emissions From Surface Impoundments Accepting Decharacterized Wastes,'' in the RCRA Docket.

State controls on sludge from nonhazardous surface impoundments are generally far less than the controls for preventing leaks. EPA's information is that thirty-seven states have no sludge requirements. Other states, such as Alabama, Florida, and Missouri, have minimal requirements under their National Pollutant Discharge Elimination System (NPDES) permits for sludge management. Pennsylvania requires sludge to be removed annually from storage surface impoundments. In California, sludge must be disposed in a landfill or monofill. One of the states with more controls is Michigan, which requires a plan for sludge monitoring, treatment, transportation, storage, and disposal, along with a hydrogeological study if there is a threat to ground water.

With respect to air emissions, the Agency recognizes that State Implementation Plans, or SIPS, which are mandated under the Clean Air Act, may provide some control. EPA solicits information on the extent to which State and Tribal programs control leaks, sludge, and air emissions from surface impoundments receiving decharacterized wastes.

H. Option 2

1. Introduction

Option 2 is an intermediate approach between saying the LDRs do not apply and saying they do apply in the traditional manner. In defining this regulatory option for consideration, EPA tried to accomplish seven basic objectives: (1) Focus controls on those situations that present risks that amount to significant permanent disposal; (2) avoid duplication with other Agency requirements; (3) provide flexibility in dealing with site-specific factors and cost-effective control alternatives; (4) recognize the effective treatment function performed by wastewater treatment impoundments, and avoid needlessly invalidating such function; (5) identify controls that protect human health and the environment; (6) minimize implementation burden; and (7) create incentives for alternative controls (state, tribal or federal) to address significant releases from such units and so render LDR controls unnecessary.

2. Applicability

To focus on risks, Option 2 excludes from control those situations which are expected to pose little risk. First it excludes wastewaters that do not have, at the point of generation, hazardous constituents present above the UTS. Such wastes obviously are not prohibited from land disposal. Second, wastewaters with *de minimis* amounts of hazardous constituents are excluded—i.e., not prohibited. (Criteria for determining *de minimis* situations would be identical to those proposed in the Phase III rule for discharges to UIC wells.) Third, sludges and leaks from biotreatment and post-biotreatment units would not be covered due to the lower risks posed by these units. Fourth, characteristic wastes which at the point of generation do not exceed 100 ppmw of total volatile organics on an annual average would not be subject to air emission controls. Fifth, surface impoundments containing underlying hazardous constituents at concentrations below a trigger level (e.g., 10 times the Maximum Contaminant Level, or MCL) would not be addressed for leaks. Finally, none of the Option 2 standards would apply if the impoundment satisfies Minimum Technology Requirements or the statutory no migration standard. These applicability principles are explained in more detail below.

To avoid duplication with other requirements, EPA would defer to other federal rules which establish controls addressing the same situations. Deferral would occur where the existing program addressed the specific UHCs of concern. In the case of air emissions, EPA would defer to standards regulating total volatile organics, as adequately covering air emissions of UHCs from this type of treatment. In addition to existing regulations, there are some CAA air emission limits under development. Inefficiencies and confusion could occur if Option 2 controls were applied and soon superseded by upcoming CAA standards. Facilities subject to CAA standards for hazardous air pollutants (in particular, those promulgated pursuant to CAA § 112) in the near future thus would not be covered by Option 2 air emission controls. In the case of releases to ground water, EPA would defer to certain existing programs, as is explained in more detail below.

This option also would recognize the existence of the types of controls mentioned above in connection with

Option 1. Thus, if an impoundment is located at a permitted TSDF, no further control would be adopted under Phase IV. EPA Regional, State, or Tribal limits which control releases of specific UHCs from impoundments also would be considered controlling and so make Phase IV controls unnecessary.

Option 2 provides flexibility in dealing with site-specific factors and cost-effective control alternatives. Facilities have the choice of treating the characteristic wastestream to meet UTS before entering a surface impoundment, thus avoiding any management standards enumerated in the option. This option also incorporates alternative means of compliance proposed in the Phase III rule, namely an exception for *de minimis* decharacterized wastestreams (i.e., prohibited wastewaters containing *de minimis* amounts of UHCs) and an option allowing the requisite mass reduction of hazardous constituents to be achieved by means of pollution prevention rather than wastewater treatment. For a simplified guide to which facilities would be affected by option 2, see the following flow chart entitled Figure 1.

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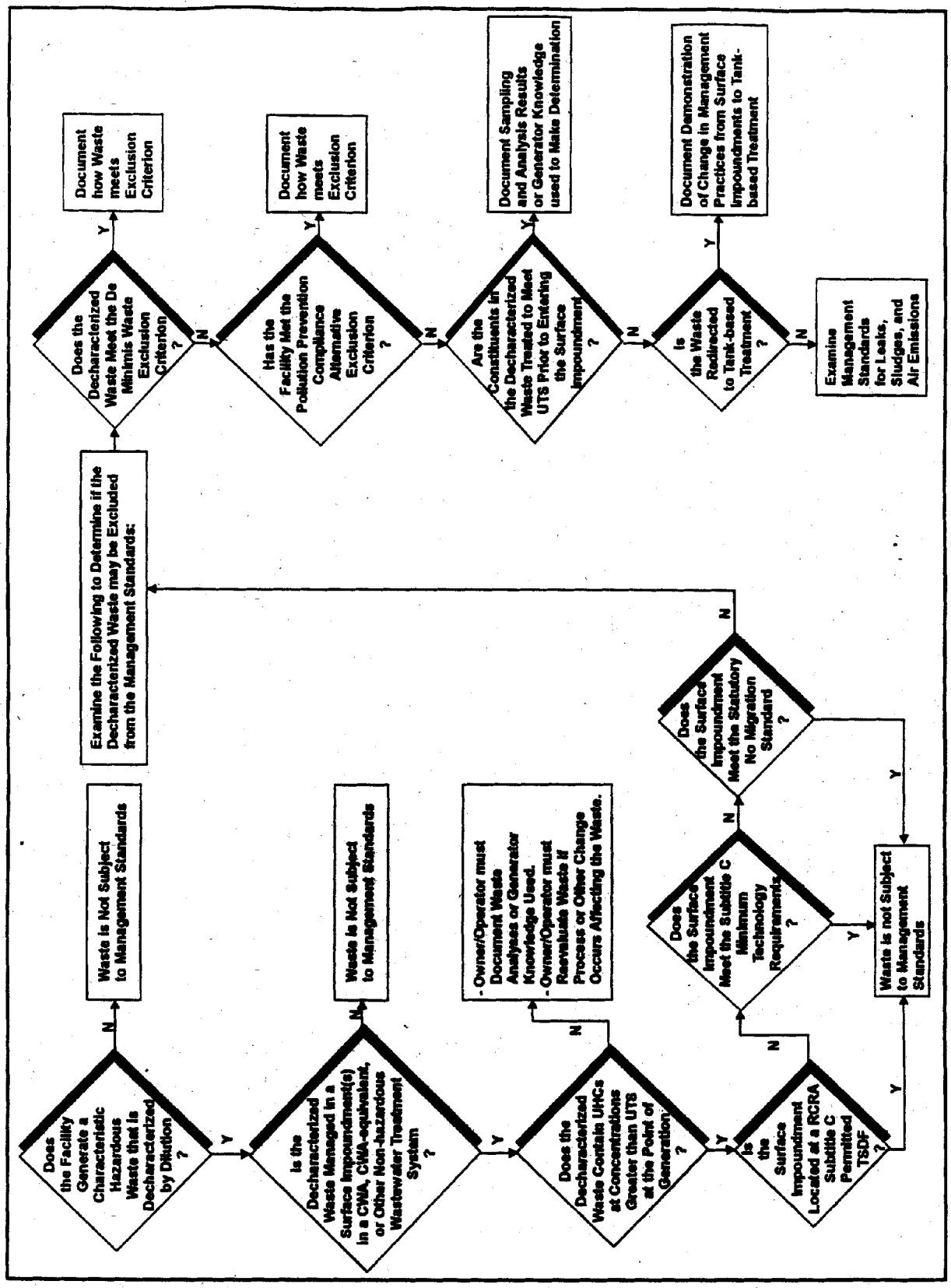

Figure 1: Option 2 - General Applicability Criteria and Compliance Alternatives for Surface Impoundments Accepting Decharacterized Wastes

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For those facilities which do not meet the criteria to screen out the low risk situations, and are not subject to other federal, State, or Tribal limits to address the UHCs of concern, Option 2 would provide controls similar to those currently applied to other industrial wastes. Air emissions would be subject to the substantive requirements for surface impoundments of RCRA Subpart CC. (59 FR 62896; December 6, 1994.) Leaks would necessitate ground water monitoring for UHCs, and corrective action would be triggered if ground water exceeds levels of concern. Sludges would be subject to UTS when removed from the surface impoundment. The following sections provide a more detailed description of these potential requirements.

To minimize implementation burdens make many of the requirements self-implementing, and set minimal reporting/recordkeeping requirements. All of the requirements would be effective two years after promulgation, due to a proposed national capacity variance (see Section VIII of this rule). Under circumstances when the air emission, leaks, or sludge control equipment required to comply with the standard cannot be operational at an existing facility by the two-year deadline, an implementation schedule for installation of the equipment would have to be developed and placed in the facility operating records. In such cases, the facility owner or operator would have to have all controls in operation no later than 48 months after the effective date. Furthermore, surface impoundments that have stopped receiving decharacterized wastewaters on or before the date of promulgation would not be subject to any of the requirements proposed today. Surface impoundments that stop receiving decharacterized wastewaters after the date of promulgation and on or before the date two years after promulgation would be subject only to the recordkeeping requirements. Where alternative non-RCRA standards are set by EPA, States, or Tribes (e.g., CAA standards for air emissions), deferral to standards means there is no RCRA requirement.

The following sections describe management standards the Agency is considering for leaks, sludges, and air emissions from surface impoundments accepting decharacterized wastes. EPA seeks comment on these standards, including the possibility of adopting standards for certain of the potential problems and not others, e.g., finalizing standards for leaks and air emission control, but not for sludge control.

Additionally, Option 2 would apply controls on air emissions for all three types of surface impoundments (pre-biological, biological, and post-biological), while limiting sludge and leak controls to pre-biological units only, based on the risk findings. The statute already specifies more lenient regulatory controls for biological and post-biological treatment impoundments. Section 3005(j)(3) exempts from minimum technology requirements hazardous waste biological and post-biological surface impoundments. Such impoundments must in general be performing aggressive biological treatment (or performing post-biological treatment), be in compliance with CWA permits and with generally-applicable ground water monitoring requirements, and be achieving significant degradation of toxic pollutants. This provision recognizes that such treatment impoundments both perform an important treatment function and pose less risk than other impoundment types. Today's proposal is premised on similar findings. EPA seeks comment on all combinations of applying the three types of controls (leaks, sludges, and air emissions) to all three types of impoundments.

3. Proposed Management Standards for Air Emissions

a. Scope. Option 2 would extend requirements of Subpart CC regulations to surface impoundments in CWA, CWA-equivalent, or nonhazardous wastewater treatment systems that accept wastes decharacterized by dilution. Subpart CC rules would not apply directly under this option, since that rule applies only to units managing hazardous waste. § 264.1080(a). However, substantive requirements, borrowed from that rule, could apply to surface impoundments receiving prohibited, decharacterized wastes. The specific standards in this option would be: general standards (264.1082), waste determination procedures (§ 264.1083), surface impoundment unit standards (§ 264.1085), closed-vent and control device standards (§ 264.1087), inspection and monitoring procedures (§ 264.1088), recordkeeping requirements (§ 264.1089), and reporting requirements (§ 264.1090). The provisions would only apply to affected surface impoundments used to manage decharacterized wastes if the decharacterized waste (containing UHCs above UTS at the point of generation) placed in the unit is determined to have an average volatile organic concentration greater than or equal to 100 ppmw based on the organic composition of the waste at the point of generation. Averaging periods of up to 1 year in duration would be utilized for each individual wastestream. The types of requirements EPA is considering are quite similar to those required generally under the CAA for control of volatile organic hazardous air pollutants (e.g., see the Hazardous Organic NESHAP (59 FR 19402, April 22, 1994) and the Benzene Waste Operations NESHAP (58 FR 3072, January 7, 1993)). For a simplified guide to the management standards for air emissions, see the following flow chart entitled Figure 2.

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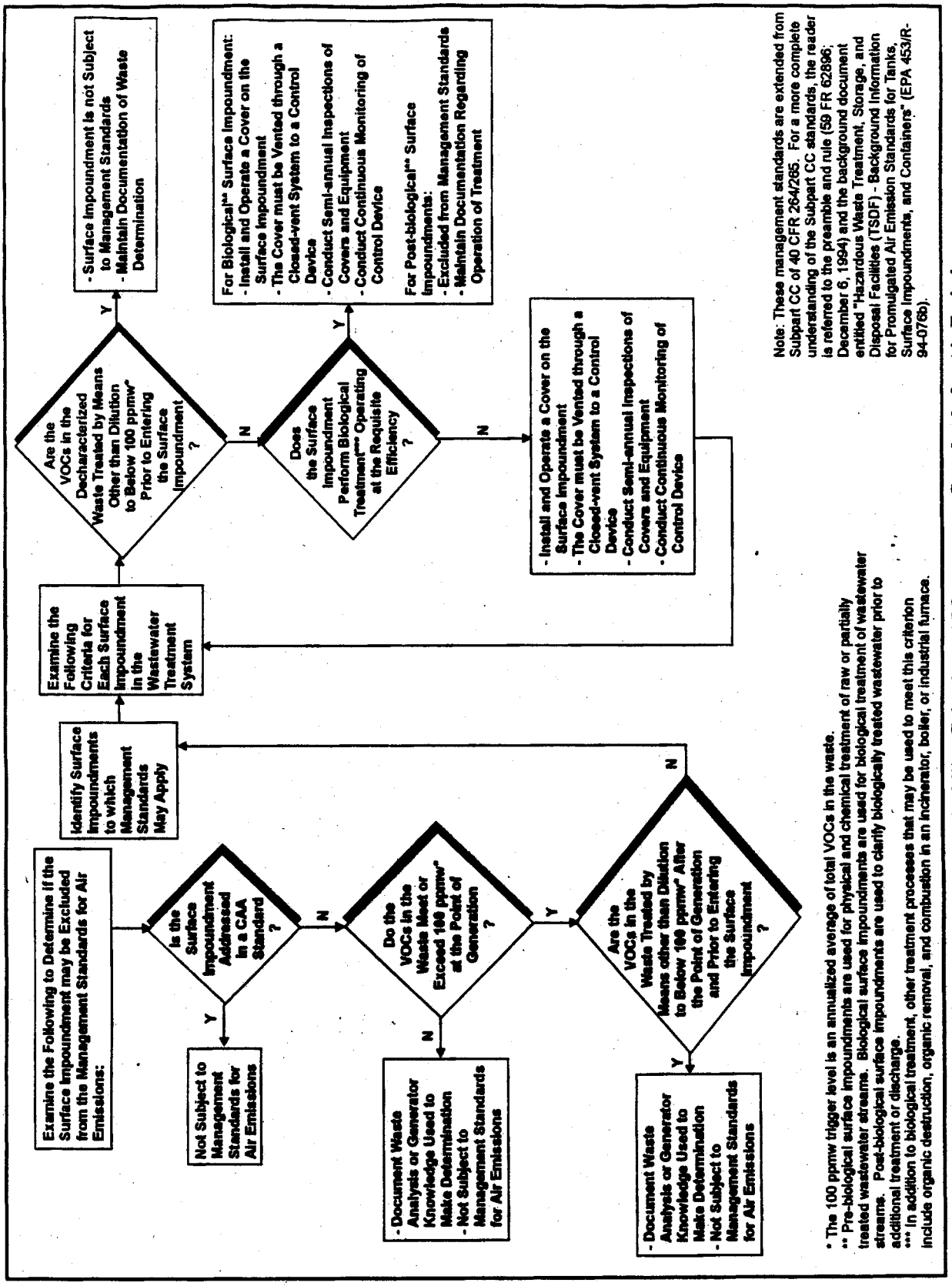

Figure 2: Option 2 - Applicability Criteria and Management Standards for Air Emissions

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b. Applicability. For each surface impoundment identified in today's rule to which the extended subpart CC requirements apply, the owner or operator would be required to use the air emission controls specified herein except when the decharacterized waste placed in the surface impoundment meets certain conditions.

(i.) Volatile organic concentration exemption. Under this option, a surface impoundment accepting decharacterized waste would not be considered to engage in impermissible transfer of untreated hazardous constituents to the ambient air if all the prohibited waste (i.e., the decharacterized waste) placed in the impoundment is determined to have an average volatile organic concentration less than 100 ppmw based on the organic composition of the waste at the point of generation. Establishing the trigger concentration of point of generation, rather than point of placement in an impoundment, is designed to prevent dilution and volatilization of organics in the waste. 59 FR at 62915. This feature of the option thus dovetails with the central concern of the D.C. Circuit in allowing dilution rather than destruction/removal via treatment for hazardous constituents.

(ii.) Treated hazardous waste exemption. Under this option, each affected surface impoundment that manages a characteristic waste that has been decharacterized by dilution but contains UHCs above UTS and has an average volatile organic concentration equal to or greater than 100 ppmw, as determined by the procedures found in § 264.1083, is required to be managed in accordance with the applicable Subpart CC requirements. See § 264.1085. Realizing that many organic UHCs likely to be present in characteristic waste being treated in a surface impoundment are also VOCs, and because the Agency wishes to be consistent with other air regulations and therefore necessitate control, the Agency believes that total VOCs is an appropriate measure for determining when potential releases through air emissions would be excessive. 976 F.2d at 17. The owner or operator would install and operate the specified air emission controls on every affected unit used in the waste management sequence from the point of generation (as it applies to the specific prohibited wastestream) through the point where the organics in the waste are removed or destroyed in accordance with § 264.1082. If the decharacterized wastestream is not treated to meet these requirements, then all surface impoundments at the facility used in the waste management sequence for this decharacterized waste would be required to use the air emissions controls specified in the extended subpart CC surface impoundment standards.

The extended subpart CC standard would thus provide owners or operators of surface impoundments accepting decharacterized wastes with several alternatives for determining when wastes have already been treated sufficiently so that surface impoundments would not have to meet the air emission control requirements. Put another way, the organic component of the prohibited wastes would be fully treated before land disposal and so the impoundment would not be subject to control. Types of treatment processes that would obviate the need for further control are an organic destruction, biological degradation, or organic removal process that reduces the organic content of the decharacterized waste and is designed and operated in accordance with certain conditions specified in the rule, or combustion in an incinerator, boiler or industrial furnace.

The requirements for a destruction, biological degradation, or removal process that reduces the organic content of the waste are specified in the extended Subpart CC rule as follows:

(1) It must reduce the volatile organic concentration of the waste to meet a site-specific treatment process exit concentration limit determined by an equation (specified in the rule) that accounts for the portion of the reduction due to dilution; or

(2) It must be a single process that achieves an organic reduction efficiency of 95 percent or greater on a mass basis, and reduces the average volatile organic concentration of the wastestream exiting the process to a level less than 50 ppmw; or

(3) It must be a biological process that either (a) achieves an organic reduction efficiency equal to or greater than 95 percent, and achieves an organic biodegradation efficiency for the process equal to or greater than 95 percent, or (b) achieves a total actual organic mass biodegradation rate for all decharacterized wastes treated by the process equal to or greater than the required organic mass removal rate for the process.

c. Surface impoundment management standards. If the prohibited, decharacterized wastes are not pretreated, the requirements under the subpart CC standards for surface impoundment air emission control equipment specify that the owner or operator install and operate on each affected surface impoundment a cover (an air supported structure or cover) that is vented through a closed-vent system to a control device meeting the requirements specified in 264.1085(d). As an alternative, an owner or operator may place the waste in a surface impoundment equipped with a floating membrane cover meeting the requirements specified in 264.1085(e).

d. Closed-vent system and control device requirements. Since emissions from impoundments would be captured and vented, this option contains provisions to assure that the vented emissions are treated properly before release. See 976 F.2d at 17. The subpart CC standards, which would be utilized under this option, require that each control device achieve at least a 95 percent reduction in the total organic content of the vapor stream vented to the device or, in the case of an enclosed combustion device, a reduction of the total organic content of the vapor stream to a level less than or equal to 20 ppmw on a dry basis corrected to 3 percent oxygen. These requirements are generally the same as those used in EPA air rules. See 59 FR 19402 and 59 FR 62896.

e. Inspection and monitoring. To ensure that emission control equipment is properly operated and maintained, the extended subpart CC standards would require the owner and operator to visually inspect certain emission control equipment items semiannually. For example, emission control equipment covers on surface impoundments would be checked semiannually by facility employees to ensure that (1) equipment is being used properly (e.g., covers are closed and latched except when an opening must be used to add, remove, inspect, or sample the waste in the surface impoundment or to inspect, maintain, replace, or repair equipment located inside the surface impoundment or to vent gases or vapors from the surface impoundment) and (2) equipment is being maintained in good condition (e.g., no visible holes, gaps, tears, or splits have developed in covers).

Continuous monitoring of control device operation is required under the subpart CC standards. This involves the use of automated instrumentation to measure critical operating parameters that indicate whether the control device is operating correctly or is malfunctioning. Semiannual leak detection monitoring using Method 21 under 40 CFR part 60, appendix A, is required for certain cover components to ensure gaskets and seals are in good condition and for closed-vent systems to ensure all fittings remain leak-tight. In addition, each closed-vent system must be monitored for leaks using Method 21 at least once per year.

The extended subpart CC standards would require that the owner or

operator repair a cover fitting found to be leaking within 15 days of detection. Repair of control equipment on a surface impoundment may be delayed beyond 15 calendar days under certain circumstances. To delay repair, the owner or operator would have to document that the repair cannot be completed without emptying the contents of the unit and also that removing the unit from service would result in the unscheduled cessation of production from the process unit or operation of the waste management unit that is generating the decharacterized waste. Repair of this control equipment would have to be completed the next time the process unit or waste management unit is generating the decharacterized waste managed in the surface impoundment is shut down.

f. Recordkeeping requirements. The extended requirements of the subpart CC standards would require the owner or operator to record certain information in the on-site facility operating logs or files. This information is to be readily available for review by authorized representatives of the EPA. Consistent with 40 CFR 264.73 and 40 CFR 265.73, the rule requires that air emission control equipment design records and certain other records be maintained in the facility operating record until facility closure. Records and results of waste determinations, inspections, and monitoring are required to be kept for at least three years from the date of entry.

The information to be collected and recorded includes: the results of all waste determinations such as of volatile organic concentrations at the point of waste generation and organic vapor pressure; design specifications for closed-vent systems and control devices and certain control equipment; emission control equipment inspection and monitoring results; Methods 27 test results; control device exceedances and actions taken to remedy them; leak repairs; management of carbon removed from carbon adsorption systems; identification of incinerators, boilers, or industrial furnaces used to treat decharacterized waste in accordance with the general requirements of the rule; documentation for biological wastewater treatment units using air emission controls in accordance with the rule requirements; and identification of equipment fittings designated as unsafe or difficult to monitor or inspect.

g. Reporting requirements. The extended requirements of subpart CC standards would require an owner or operator to submit reports to the EPA only when circumstances occur at the facility resulting in noncompliance with certain provisions of the rule. Each report required under the extended subpart CC standards would be submitted to the EPA Regional office having jurisdiction for that particular location. The report would be signed and dated by an authorized representative of the facility owner or operator.

An owner or operator subject to the extended requirements of 40 CFR 264 subpart CC would have to report to the EPA all circumstances resulting in placement of a decharacterized waste in a surface impoundment subject to the proposed rule and not using air emission controls required by the rule when either of the following conditions occur: (1) The characteristic waste has a volatile organic concentration equal to or greater than 100 ppmw as determined on a mass-weighted average basis at the point of waste origination, or (2) the process used to treat the characteristic waste fails to meet the applicable conditions specified in the rule. The owner or operator would have to submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the circumstance.

An owner or operator subject to the extended requirements of 40 CFR part 264, subpart CC and using a control device in accordance with the requirements of the rule would be required to submit a semiannual written report to the EPA. This report would describe each occurrence during the previous 6-month period when a control device is operated continuously for 24 hours or longer in noncompliance with the applicable operating values defined in 40 CFR 264.1035(c)(4) or when a flare is operated with visible emissions as defined in 40 CFR 264.1033(d). An owner or operator would not be required to submit this report for a 6-month period during which all control devices at a facility subject to the extended subpart CC standards are operated by the owner or operator so that during no period of 24 hours or longer did a control device operate continuously in noncompliance with the applicable operating values defined in the rule.

4. Proposed Management Standards for Leaks

a. Scope. If surface impoundments receiving decharacterized wastes (i.e., prohibited wastes) are leaking excessively, arguably disposal of untreated UHCs is occurring at a level which invalidates the treatment function of the impoundment (i.e., which constitutes an impermissible cross-media transfer of hazardous constituents. 976 F.2d at 17.). In addressing this possibility, this option presents facilities with a sequence of monitoring, detection, and correction mechanisms to assure that impoundments do not leak UHCs at these levels, and thus allows continued use of the impoundment as part of a system achieving RCRA-equivalent treatment. Thus, facilities choosing to adopt the ground water protection approach set out below could continue to use impoundments to treat decharacterized wastewaters.

An alternative to adopting a ground water protection program is to treat decharacterized wastes before they reach the impoundment, to segregate them altogether, or to retrofit the impoundment so that it meets section 3005(j)(11) minimum technology requirements. These options remain available at any time to a facility, so that a facility would not be locked in to the ground water protection alternative if it wishes to pursue alternative means of compliance. There is a caveat, however. If a facility chooses to comply with the ground water protection alternative and later detects impermissible levels of contamination in the ground water at the well sites, the contamination would still have to be remediated as set out in this proposed rule, even if the facility begins to divert or pretreat the prohibited characteristic wastestream at that time. The logic for this is that there would have been documented disposal of prohibited wastes not treated to meet LDR standards. In such circumstances, the Agency has available to it the remedy that the illegally disposed waste must be retrieved and properly managed. (See U.S. v. Structural Metals, Inc. Civil Action No. SA—91—CA—201 (W.D. TX May 27, 1992)—a consent decree requiring that 3600 tons of illegally disposed hazardous waste be removed from a landfill and properly treated before being disposed.)

Option 2 would adopt, with modifications, certain sections of the Municipal Solid Waste Landfill rule (referred to herein as the MSWLF rule) at 40 CFR Part 258 Subpart E, for the control of leaks and the application of corrective action to the following affected units: surface impoundments in CWA, CWA-equivalent, or nonhazardous wastewater treatment systems that accept wastes decharacterized by dilution. The specific standards in this option include portions of ground water monitoring systems (§ 258.51); ground water sampling and analysis requirements (§ 258.53); assessment monitoring program (§ 258.55); assessment of corrective action measures (§ 258.56); selection of remedy (§ 258.57); implementation of the corrective action

program (§ 258.58). For a simplified guide to applicability criteria and management standards for leaks, see Figure 3.

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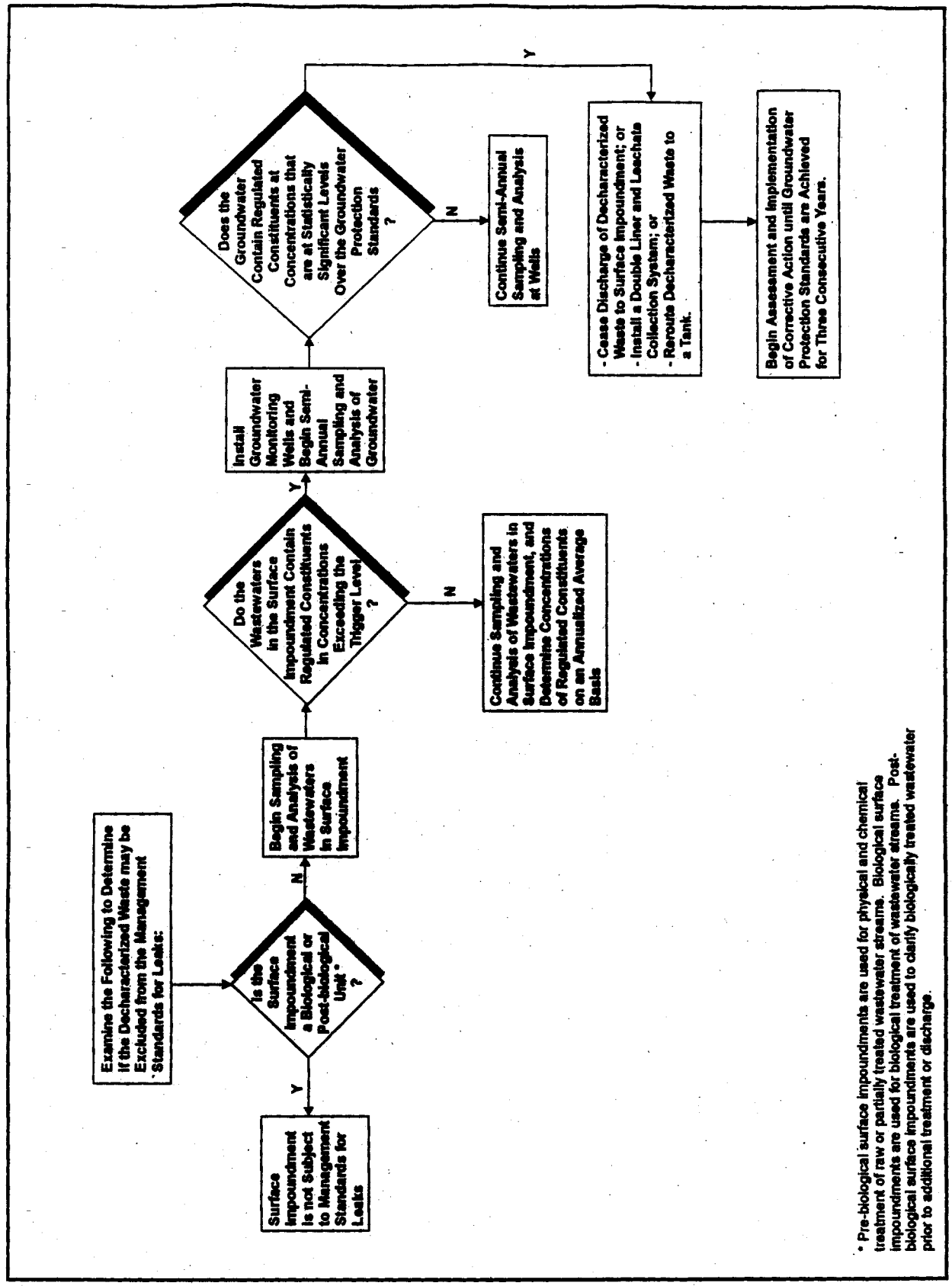

Figure 3: Option 2 - Applicability Criteria and Management Standards for Leaks

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b. Applicability. The proposed management standards for leaks would only apply to owners and operators of facilities that generate characteristic wastes that at the point of generation (and prior to decharacterization) contain UHCs at concentrations that are greater than UTS levels. The UHCs that are present at greater than UTS are known as ''regulated constituents.'' Only these regulated constituents must be considered in complying with the management standards for leaks. UHCs present in a characteristic waste at levels less than or equal to UTS are not subject to the proposed management standards for leaks. If these decharacterized wastes are discharged to a surface impoundment that meets the substantive minimum technology requirements of 40 CFR 268.4, the Phase IV leak requirements would not apply.

The Agency's primary concern with regard to leaks from these surface impoundments is the potential for regulated constituents to migrate to the ground water in significant concentrations. The most direct method available for assessing the presence of regulated constituents in the ground water is groundwater monitoring. However, the Agency believes it would be overly burdensome and unnecessary to achieve the rule's intended purposes to require every surface impoundment that manages decharacterized wastes to install ground water monitoring wells. As a result, the Agency is proposing that regulated constituents for which an MCL has been promulgated under section 1412 of the Safe Drinking Water Act (SDWA), codified under 40 CFR part 141, must be present at concentrations in the surface impoundment wastewaters that meet or exceed 10 times the MCL before ground water monitoring is warranted. Thus, if the MCL for a hazardous constituent is 1 mg/l and the hazardous constituent is present in surface impoundment wastewaters at less than 10 mg/l, no groundwater monitoring would be required. The Agency believes that the use of MCLs as a trigger level for ground water monitoring is appropriate because MCLs are a reasonable benchmark of risk posed to human health from a drinking water source. By using a trigger of 10 times the MCL, the Agency is taking into account the reasonable dilution and attenuation that would occur as constituents migrate in the substrate. This trigger level corresponds to the dilution and attenuation factor (DAF) of 10 (at the point of release to the aquifer) currently under consideration for the Hazardous Waste Identification Rule (HWIR) proposal.

For UHCs that do not have MCLs, the Agency is proposing the following approach. In the absence of an MCL, the state or tribal risk-based number (i.e., 10 times the state or tribal ground water protection number) would be used for the regulated constituent (see 40 CFR 258.55(i)). In the absence of both an MCL and state or tribal risk-based number, the UTS level—the directly RCRA-equivalent level—would be used for the regulated constituent.

c. Surface impoundment management standards. The Agency is proposing to use annual sampling of the wastewaters in the surface impoundment to determine if regulated constituents are present at concentrations that exceed the trigger level. Sampling and analysis need only be conducted for those regulated constituents identified in the characteristic waste at the point of generation. If a new decharacterized wastewater is accepted by the surface impoundment, then the owner or operator would be required to characterize the new decharacterized wastewater at point of generation to identify additional regulated constituents prior to the next annual sampling date. Annual sampling must be continued for as long as the unit is receiving decharacterized wastes. Sampling and analysis is discussed in further detail in the technical support document entitled, ''Technical Support Document for Leaks, Sludges, and Air Emissions—Phase IV.''

To determine if a trigger level has been exceeded, the owner or operator would calculate an annualized average concentration for each regulated constituent identified. This annualized average will account for process fluctuations and process upsets and would appropriately represent the wastewaters in the surface impoundment. At a minimum, the owner or operator would be required to include at least four sampling events (i.e. quarterly), and a minimum of four independent samples from each sampling event. (See ''Technical Support Document—Options for Management Standards for Leaks, Sludges, and Air Emissions From Surface Impoundments Accepting Decharacterized Wastes'' in the RCRA docket for more information on sampling.)

d. Ground water and corrective action management standards. EPA is proposing that the ground water monitoring and corrective action regulations for municipal solid waste landfills (MSWLFs) under the Subtitle D program (Solid Waste Disposal Facility Criteria, 56 FR 50978, October 9, 1991) be adopted with minor modifications for the monitoring and remediation of surface impoundments subject to today's proposed rulemaking. EPA believes that the ground water monitoring and corrective action standards in the MSWLF rule, as modified in today's rule, are appropriate and protective for the surface impoundments subject to today's rulemaking. Thus, under this option, an impoundment choosing to operate with these measures would be considered a treatment impoundment not engaging in permanent disposal of waste. Put another way, the impoundment could be part of a treatment process that can perform LDR-equivalent treatment. EPA is not, however, intending that the approach outlined in today's proposed rule is necessarily appropriate for other industrial solid waste management units.

Many states have ground water protection programs that include ground water monitoring and corrective action that may apply to the types of units that EPA is covering in today's proposal. To the extent that state programs require ground water monitoring and corrective action that include the UTS constituents of concern (or can be modified to cover those constituents) and are substantially similar to today's proposal (i.e., frequency of monitoring, requirements regarding ground water monitoring wells), EPA would defer to those State and Tribal Programs. The owner/operator would have to demonstrate that there exists a State or Tribe numerical limit for each regulated constituent and document that in their operating records. For those constituents not covered by State or Tribal limits, today's rule would apply. Further, facilities affected by today's rulemaking that have existing ground water monitoring and corrective action programs that are not required by State or federal government may be able to continue those programs in lieu of the regulations proposed here.

(i) MSWLF rule. Under this option, EPA is proposing to adopt some, but not all provisions of the MSWLF regulations, which are promulgated under 40 CFR Parts 257 and 258. The sections of Part 258 that EPA would adopt with minor modifications are in Subpart E: Ground Water Monitoring and Corrective Action. These are: Ground Water Monitoring Systems (§ 258.51); Ground Water Sampling and Analysis Requirements (§ 258.53); Assessment Monitoring Program (§ 258.55); Assessment of Corrective Measures (§ 258.56); Selection of Remedy (§ 258.57); and Implementation of the Corrective Action Program (§ 258.58). The section in Subpart E not being considered in today's rule is

section § 258.54, which requires a ground water monitoring detection program. General descriptions of the sections and changes that EPA is proposing for adoption in today's rule are provided below and under the following section titled ''Specific Requirements''.

Self-Implementing Provisions

The MSWLF regulations are structured to be either self-implemented by an owner or operator or implemented in ''approved states'' through approval and interaction with state regulatory agencies. The MSWLF rule was designed so that states with federally approved programs could define ground water protection and corrective action programs for individual MSWLFs that accounted for site-specific factors.

In referencing the MSWLF rule for ground water monitoring and corrective action activities for surface impoundments under today's rule, the Agency is proposing to adopt only those provisions that are self-implementing. EPA would modify the applicability of the MSWLF rule such that any provisions that require state approval would not apply. EPA is aware, however, that some of the site-specific provisions in the MSWLF rule that would not be available under today's proposed rule might be reasonable approaches for monitoring surface impoundments. For example, § 258.51(b) allows the director of an approved state to approve a multi-unit ground-water monitoring system, rather than require separate ground water monitoring systems for each unit.[1] At some facilities subject to today's rule with closely spaced surface impoundments, multi-unit monitoring may be protective and less expensive to install and monitor. EPA seeks comment on whether the multi-unit provision and any other site-specific provisions in the MSWLF rule that would not be available should be allowed to be self-implemented by facilities subject to ground-water monitoring and corrective action under the Phase IV rulemaking.

Certification of a Self-Implementing Program

In the MSWLF rule, the Agency stated that independent party review and certification of certain self-implemented programs or demonstrations required by the rule is necessary to ensure technical adequacy of critical ground water monitoring and corrective action milestones. Four provisions adopted from the MSWLF rule require certification by an independent ''qualified ground water scientist'': (1) Number, spacing and depths of monitoring systems (§ 258.51(d)); (2) determination that contamination was caused by another source or that a statistically significant increase resulted from an error in sampling analysis or evaluation (§ 258.55(h)(2)); (3) determination that compliance with a remedy requirement is not technically practicable (§ 258.58(c)(1)); and (4) completion of remedy (§ 258.58(f)).

The Agency defined a ''qualified ground water scientist'' at § 258.50 and discussed the relevant background and experience needed for these professionals to certify ground water monitoring and corrective action requirements in the MSWLF rule. This definition is also promulgated under § 260.10 for certain ground water monitoring, but not corrective action, certifications under the hazardous waste program. Individuals who qualify to certify ground water regulatory milestones under either the Subtitle D or C programs would also qualify to certify the ground water requirements adopted under today's rulemaking. Owners or operators of surface impoundments that undergo corrective action under today's rulemaking should ensure that any ''qualified ground-water scientists'' working in the Subtitle C program are qualified to certify corrective action requirements in addition to ground water monitoring requirements.

(ii) Ground water monitoring. Installing a ground water monitoring system. For today's proposed rule, EPA would require within one year of triggering ground water monitoring (that is, when a regulated constituent is detected at levels above regulatory concern in the surface impoundment), the owner/operator must install a ground water monitoring system and begin monitoring those wells for all regulated constituents. The Agency believes that it is appropriate to monitor for all the regulated constituents in the wells for the following reasons: (1) There will no longer be any type of monitoring conducted in the surface impoundment (as long as the chemical composition of the waste remains the same at the point of generation); (2) monitoring of all regulated constituents is similar to the requirements established under the MSWLF rule where analysis of a number of constituents is required to determine the severity of a leak; and (3) it is essential to accurately characterize the chemical composition of a ground water release in order to aid in the corrective action plan, if necessary. EPA believes that allowing one year will enable owner/operators sufficient time to properly characterize their site and install ground water monitoring wells that will meet the performance standards of 258 Subpart E. EPA is aware that many sites with less complex hydrogeology and few units may not need the entire year to install their systems and commence monitoring. Facilities with existing monitoring systems that meet the applicable performance standards of Subpart E, Part 258 ground water monitoring systems will be required to begin monitoring for the UTS constituents regulated under today's rule at the next planned monitoring period under existing monitoring programs, or within one year.

Establishing a Ground Water Monitoring Program

The ground water monitoring program in today's proposed rule focuses on a different set of constituents than those in the MSWLF rule. Owners or operators subject to today's rule are required to sample waste water in the affected surface impoundments to determine if they have to install ground water monitoring systems. If ground water monitoring is triggered, owners or operators are required to undertake a monitoring program under § 258.55 of the MSWLF rule to monitor for only those UHCs that are present in the decharacterized waste prior to its dilution and disposal in the surface impoundment treatment system.

The ground water monitoring system must include a sufficient number of wells at the appropriate location and depth to determine background level and the quality of the ground water at the relative point of compliance. The relative point of compliance is required to be less than or equal to 150 m from the waste management unit boundary located on land owned by the facility. The MSWLF rule allowed for the director of an approved state to determine an alternative boundary. Today's rule is not allowing an alternative boundary, but rather requires the owner/operator to select the relative

[1] The multi-unit system must be as protective of human health and the environment as individual monitoring systems, based on factors including the number, spacing, and orientation of the units, the hydrogeologic setting, site history, engineering design of the units, and type of waste accepted in the units. In addition to approval of the multi-unit system, § 258.51(d) requires that the number, spacing, and depths of monitoring systems must be certified by a ''qualified ground water scientist'' or by the director of an approved state. In today's rulemaking, certification by the qualified ground waster scientist would be required, rather than approval by the state. In the absence of state approval, this certification would help ensure that a protective multi-unit monitoring system was installed (independent certification of certain ground water monitoring and corrective provisions is discussed further below).

point of compliance as stated above, and document this in the facility's records.

If statistically significant levels of these constituents are detected above the constituent-specific ground water protection standards as determined by § 258.55(h) of the MSWLF rule, the owner or operator is required to undertake corrective action to bring levels of the regulated constituents in the ground water to below the ground water protection standards. In contrast, under the MSWLF detection monitoring regulations, which are not being considered under this option, owners or operators are required to monitor for a list of constituents from specified lists (see Appendix I to Part 258). Constituents on this list are generally thought to be present at MSWLFs, have physical and chemical properties that cause them to be early indicators of a release from a unit and are easy and inexpensive to analyze. The MSWLF rule has provisions to modify the detection monitoring list via the overseeing regulatory authority if parameters are not reasonably expected to be found in ground water at the site. In contrast, the UHCs that the owner or operator is monitoring for under proposed Option 2 may not have fate and transport characteristics that would provide earliest indication of a release. However, EPA does not at this time have information to indicate whether the list of indicator parameters monitored for under the MSWLF detection monitoring program are present at the surface impoundments subject to today's proposed rule. Monitoring for constituents that are not present obviously would not provide protection from releases of site-specific UHCs. For these reasons, EPA is not proposing to adopt the requirement for facilities to monitor the ground water under the detection ground water monitoring program specified in 258.54. EPA is, however, proposing to require facilities to directly implement a program to monitor the regulated constituents in the ground water.

Detecting Releases

Today's proposed rule also would have a different approach when releases have been detected. When constituents are found under MSWLF rule detection monitoring at levels that trigger the next phase of monitoring (assessment), the owner/operators are required to analyze the ground water for a broad list of constituents (Appendix II to Part 258 of the MSWLF rule) that may be present to better characterize the nature of the release. Facilities that move to corrective action generally are required to address all ground water contamination, rather than a subset of facility-specific UHCs. Today's proposed rule does not require facilities to scan for the § 258 Appendix II constituents because EPA's authority is limited to the UHCs in the prohibited wastes that are required to receive RCRA-equivalent treatment. Rather, owner/operators under today's rule would be required to move directly to assessment of corrective measures upon detecting that releases are statistically significant.

Corrective Action

If corrective action is required, this means that untreated UHCs are being released to the environment at an excessive level. The impoundment thus is not performing equivalent treatment. An operator can, however, capture and treat the constituents via corrective action, which would have the effect of re-validating the surface impoundments treatment function.

EPA is aware that owners or operators undertaking corrective action under today's proposed approach might de facto remediate constituents other than the regulated constituents in the ground water. For example, a ground water extraction system with an air stripping treatment unit designed to remove site-specific regulated constituents could also strip and collect other VOCs present in the ground water. Facilities may also be required to remediate all ground water contamination under other state or federal actions or may remediate additional contamination voluntarily because of concern over liability associated with leaving ground water partially contaminated.

Alternatives to Ground Water Monitoring

EPA is aware that the MSWLF rule does not adequately allow for alternatives to ground water monitoring when ground water monitoring is not practicable or would not detect early releases. For example, some landfills are located in arid regions where depth to ground water may exceed many hundreds of feet. In such a situation, ground water monitoring wells located at the margin of a unit might not intercept a release, as it might move laterally as well as vertically prior to intercepting the ground water at great depth. In addition, such wells would not detect a release until considerable contamination has entered the subsurface. EPA is currently developing a proposed rule to allow for alternative monitoring systems for remote, small arid landfills where monitoring of the unsaturated zone would afford early detection of releases before the release migrates to the ground water. EPA has not included a related provision in today's proposed rule, because existing information indicates that the affected facilities are located adjacent to bodies of water, where ground water under the facility would be close to the surface. As with other ground water monitoring programs, EPA encourages owners or operators to install innovative monitoring systems, such as vadose zone monitoring, in addition to ground water monitoring, if those systems would aid in the early detection of releases.

(iii) Integration of option 2 with existing programs.—EPA is aware that many of the facilities that would be subject to the requirements of Option 2 will be undergoing ground water monitoring and corrective action under existing state or federal authorities. Approximately one half of the universe of affected facilities will be RCRA hazardous waste treatment, storage, or disposal facilities (TSDFs) that are permitted or operating under interim status. As noted above, at these facilities, the surface impoundments subject to the Phase IV rule will be ''solid waste management units'' (SWMUs) that are eligible for corrective action under § 3004(u) and (v), § 3008(h), § 7003, and other authorities, such as CERCLA § 106. These surface impoundments, as SWMUs, may or may not be undertaking ground water monitoring or corrective action when the Phase IV rule becomes effective. Similarly, certain states already require ground water monitoring or corrective action of surface impoundments, regardless of their status under RCRA Subtitles C or D. Further, some facilities affected by today's rulemaking may be conducting ground water monitoring and corrective action activities that are not required by a State or federal government.

As stated above, to the extent that state programs require ground water monitoring and corrective action that include the UTS constituents of concern (or are modified to cover those constituents) and are substantially similar to today's proposal (i.e., frequency of monitoring, requirements regarding ground water monitoring wells), EPA is deferring to those State and Tribal programs. However, EPA anticipates that many of these state or federal corrective action ground water monitoring programs will not require monitoring of all of the regulated constituents identified by facilities subject to today's rule. Owners or operators could need to modify existing ground water monitoring programs to add any UHCs (and their associated

ground water protection standards under 258.55(h)) that are not currently being monitored to avoid any of the potential Phase IV controls.

EPA also seeks comment on a ground-water monitoring approach not proposed in today's rule. As an alternative, facilities that are triggered into ground water monitoring under today's rule would be required to undertake a detection monitoring program under 258.54, rather than commence directly with an assessment program. The purpose of a detection monitoring program in the MSWLF rule is to detect releases by monitoring a set of constituents or parameters that provide a reliable indication of ground water contamination. In the MSWLF rule, Appendix I to Part 258 was developed as a list of organic and inorganic constituents that are likely to be found in the ground water if releases occur from a MSWLF. As stated earlier, EPA does not believe that this list is appropriate for the facilities that are subject to today's rulemaking, as they do not have the type and variety of wastes that are typically found in landfills. Under this alternate option, EPA would not require facilities under today's rulemaking to monitor for Appendix I Part 258 parameters under their detection monitoring programs. Instead, facilities would be required to monitor for indicator parameters (such as specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in ground water. If statistically significant levels were detected above background conditions of these indicator parameters, the facility would be required to undertake assessment monitoring, wherein the facility would analyze for the presence of UTS constituents, assess the potential for offsite releases, and initiate an assessment of corrective measures. This approach would shift the focus of the initial ground water monitoring program to the detection of releases, rather than the detection of site-specific UHCs that are regulated in today's rule. The MSWLF rule, under 258.54(1) and (2), lists several factors to allow an owner or operator to deviate from the Appendix I list under the approval of a state director. Under this alternative approach, facilities would establish an alternate list through self-implementation, rather than by state approval.

(iv) Summary of specific requirements for ground water monitoring and corrective action from the MSWLF rule § 258.51 ground water monitoring systems.—This section requires ground water monitoring systems (if constituent levels in impoundments exceed certain levels) to meet certain requirements and design specifications. Systems are required to monitor both background water quality and ground water at the point of compliance.

§ 258.53 Ground Water Sampling and Analysis. This section requires that the owner/operator follow certain sampling and analysis procedures, including quality assurance and quality control, and specifies the number of samples taken and the statistical procedures to be followed.

§ 258.55 Assessment Monitoring Program. As discussed above, EPA is proposing to require that owners or operators that would be compelled to undergo ground water monitoring under today's rule bypass the MSWLF rule detection monitoring program and undertake assessment monitoring directly. The purpose of the assessment monitoring program in today's proposed rule would be to monitor ground water for the presence of site-specific regulated constituents determined to be present in the decharacterized wastestream at the point of generation, and to assess whether any statistically significant releases need to undergo corrective action. The assessment monitoring program contains requirements for sample number and determination of background for constituents, criteria for moving into corrective action and additional monitoring requirements under corrective action. This section also requires the owner/operator to establish ground water protection standards for each of the regulated constituents as follows: (1) If an MCL is available, the MCL is the ground water protection standard; (2) if there is no MCL, the background concentration is used as the ground water protection standard; and (3) if the background concentration is greater than the MCL, the background level is the ground water protection standard. The Agency believes that it may not be reasonable to require the owner or operator to reduce the concentrations of hazardous constituents below background. (See 56 FR 51087, October 9, 1991). Although background levels are not health-based standards, they are a practical measurement of what can be achieved by remediation and today's proposal would not preclude a State or other entity from requiring an owner or operator to clean up contamination below background levels where it is warranted. As noted earlier, specific federal (e.g., 3004(u) corrective action), state, local, or tribal levels also could be used in lieu of these levels.

Furthermore, in light of the self-implementing nature of these specific standards for leaks for surface impoundments, the Agency is not adopting the provisions of 268.55(i) which address the site specific protection standards.

As discussed above, EPA will not require owner/operators under assessment monitoring to scan the ground water for constituents listed in Appendix II to Part 258. Instead, facilities will move directly to assessment of regulated constituents as required in § 258.56 if statistically significant levels of contaminants are found to exceed the ground water protection standard. More information on the required monitoring program can be found in ''Technical Support Document—Options for Management Standards for Leaks, Sludges, and Air Emissions From Surface Impoundments Accepting Decharacterized Wastes'' in the RCRA Docket.

§ 258.56 Assessment of corrective measures.—Within 90 days of finding that any of the regulated constituents have been detected at a statistically significant level exceeding the ground water protection standards, the owner/operator must undertake an assessment of corrective measures that addresses specified criteria.

As discussed above, today's rule would also introduce the new requirement into § 258.57 that once it is determined that corrective measures are necessary, the facility would be required to implement one of the following: (1) cease discharge of the decharacterized wastestream into the surface impoundment as soon as is practical (i.e., reroute decharacterized wastestream to a tank) or (2) installation of a double liner and leachate collection system.

§ 258.57 Selection of remedy. Based on the results of the assessment required by § 258.56, the owner/operator must select a remedy that meets several protectiveness standards. This section also requires that the owner/operator consider several evaluation factors when selecting a remedy and establish a schedule for initiating and completing the remedial activities. This section also allows for no remediation under enumerated circumstances, e.g., ground water is already contaminated by multiple sources and clean up of release would provide no significant reduction of risk. The Agency has determined that since these remediation waivers are not self-implementing, they will not be adopted as part of this proposal.

§ 258.58 Implementation of the corrective action program. This section requires that once a remedy is selected, the owner/operator must implement a corrective action program that demonstrates compliance with the ground water protection standards established under § 258.55. If necessary, the owner/operator must also take interim measures to protect human health and the environment. Other requirements in this section include implementing alternative methods or techniques for remediation if the selected remedy is not effective, and criteria for establishing when meeting the ground water protection standard cannot practicably be achieved.

5. Proposed Management Standards for Sludges

a. Scope. Under Option 2, the Agency would require management standards for sludges from prebiological surface impoundments in CWA, CWA-equivalent, or nonhazardous wastewater treatment systems that accept decharacterized wastes, when the sludges are removed from the impoundments for land disposal elsewhere. Data available to the Agency indicate that UHCs may be present in the decharacterized wastewaters and may be transferred to sludges in these impoundments at concentrations that pose a threat to human health and the environment. The Agency has limited data indicating biological or post-biological surface impoundment sludges do not pose significant risks when disposed. Nor would the Agency expect significant concentrations of hazardous constituents to be present. A more detailed discussion of today's proposed rule can be found in the technical support document entitled, ''Technical Support Document for Leaks, Sludges, and Air Emissions—Phase IV.''

b. Rationale. The approach for sludges under this option is conceptually similar to that proposed for the ground water and air exposure scenarios. If sludges contain hazardous constituents in excess of levels that pose a risk to human health or the environment (see 976 F. 2d at 17), this form of cross-media transfer of hazardous constituents could be considered too excessive to allow the impoundment to be considered an equivalent form of treatment, unless the sludges were to be treated to remove that risk. Under this option, the evaluation would be made at the time sludges are removed from the impoundment, not while the sludges remain within an impoundment. This is because EPA does not believe in-place sludges would be a release pathway separate from the leaks pathway. Put another way, by controlling leaks (as explained in the previous section), any risks posed by sludges while in the impoundment should be accounted for. Consequently, any potential incremental risk would arise when the sludges are disposed elsewhere. (Cf. RCRA section 3005 (j) (11) indicating that treatment standards for hazardous sludges do not apply while sludges are in the impoundment, and thus apply only when the sludges are removed and land disposed).

EPA is proposing the technology-based UTS as the benchmark for evaluating whether sludges are capable of posing significant risk. This approach could be replaced when the Agency develops risk-based levels through the Hazardous Waste Identification Rule process. In the interim, the UTS standards serve as the best available measure of when threats are minimized, and treatment to those levels certainly satisfies any requirement of equivalent treatment.

EPA also reiterates that, as a legal matter, it can be argued that even no treatment of sludges is equivalent to subtitle C LDR controls. This is because generation of sludges is usually a new point of generation at which the newly-generated waste is reevaluated to determine if it is subject to the LDR standards. If non-hazardous, the sludges would not be so subject (i.e., would not be prohibited wastes). See 55 FR 22661–62. Thus, literal application of an equivalence test would result in no treatment of these sludges, since the sludges will be non-hazardous wastes by definition (they cannot be hazardous wastes because they are being generated in subtitle D impoundments), and so would not require further treatment under the standard subtitle C approach.

c. Applicability. For a simplified guide to applicability criteria and management standards for sludges, see Figure 4.

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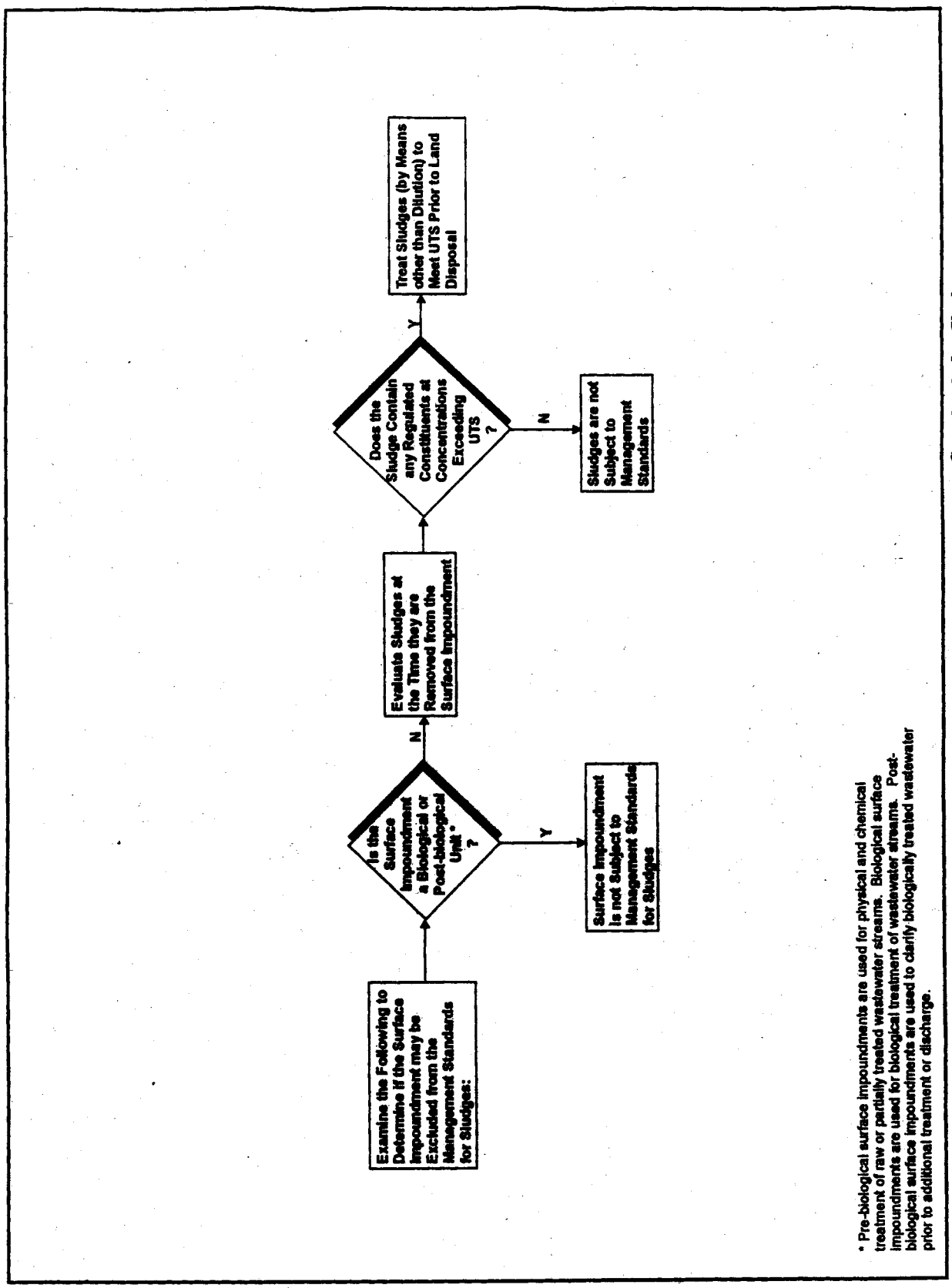

Figure 4: Option 2 - Applicability Criteria and Management Standards for Sludges

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d. Determining UHC concentrations in surface impoundment sludges. The Agency would require sampling of the sludges removed from prebiological surface impoundments at the time the sludges are removed to determine if the concentrations of UHCs in the removed sludge exceed UTS. Representative sampling and analysis of the sludge need only be conducted for those UHCs identified in the characteristic wastewater at the point of generation. A more detailed discussion of representative sampling and analyses is provided in the technical support document entitled, ''Technical Support Document for Leaks, Sludges, and Air Emissions—Phase IV.''

e. Management standards. If the concentration level of one or more of the UHCs exceeds UTS, then the sludge must be treated by means other than dilution to meet UTS. If the surface impoundment will no longer be receiving decharacterized wastewaters, then the owner or operator would be required to conduct representative sampling of the sludges when sludges are next removed from the impoundment. No further sampling of removed sludges would be required after decharacterized wastes are no longer received by the unit.

6. Recordkeeping Requirements for Leaks and Sludges

Under Option 2, the Agency would establish recordkeeping requirements for leaks and sludges. An owner or operator that utilizes surface impoundments in CWA, CWA-equivalent, or non-hazardous wastewater treatment systems to manage decharacterized wastes would have to maintain records of any test results, waste analyses, or other determinations for at least three years.

7. Sampling and Analysis

The Agency would like to point out that the sampling and analysis requirements are not overly burdensome. Owners and operators that would be affected by today's proposed Phase IV rules would only be required to perform a minimum number of analyses. Generator knowledge could be used in lieu of sampling and analysis. See section I.D.3.c. for a discussion of what constitutes acceptable generator knowledge.

I. Option 3

A final option to address the potential problem of releases of hazardous constituents from decharacterized wastes in surface impoundments is to require that such wastes meet UTS for the UHCs before entering the impoundment (unless the impoundment satisfies Minimum Technology Requirements or the statutory no migration standard). A waste could be aggregated and diluted, but achievement of UTS for the hazardous constituents would have to be accomplished by mass removal/destruction before entering a surface impoundment. The pollution prevention compliance alternative and the *de minimis* exemption would be allowed for Option 3. For a simplified guide to Option 3, see Figure 5.

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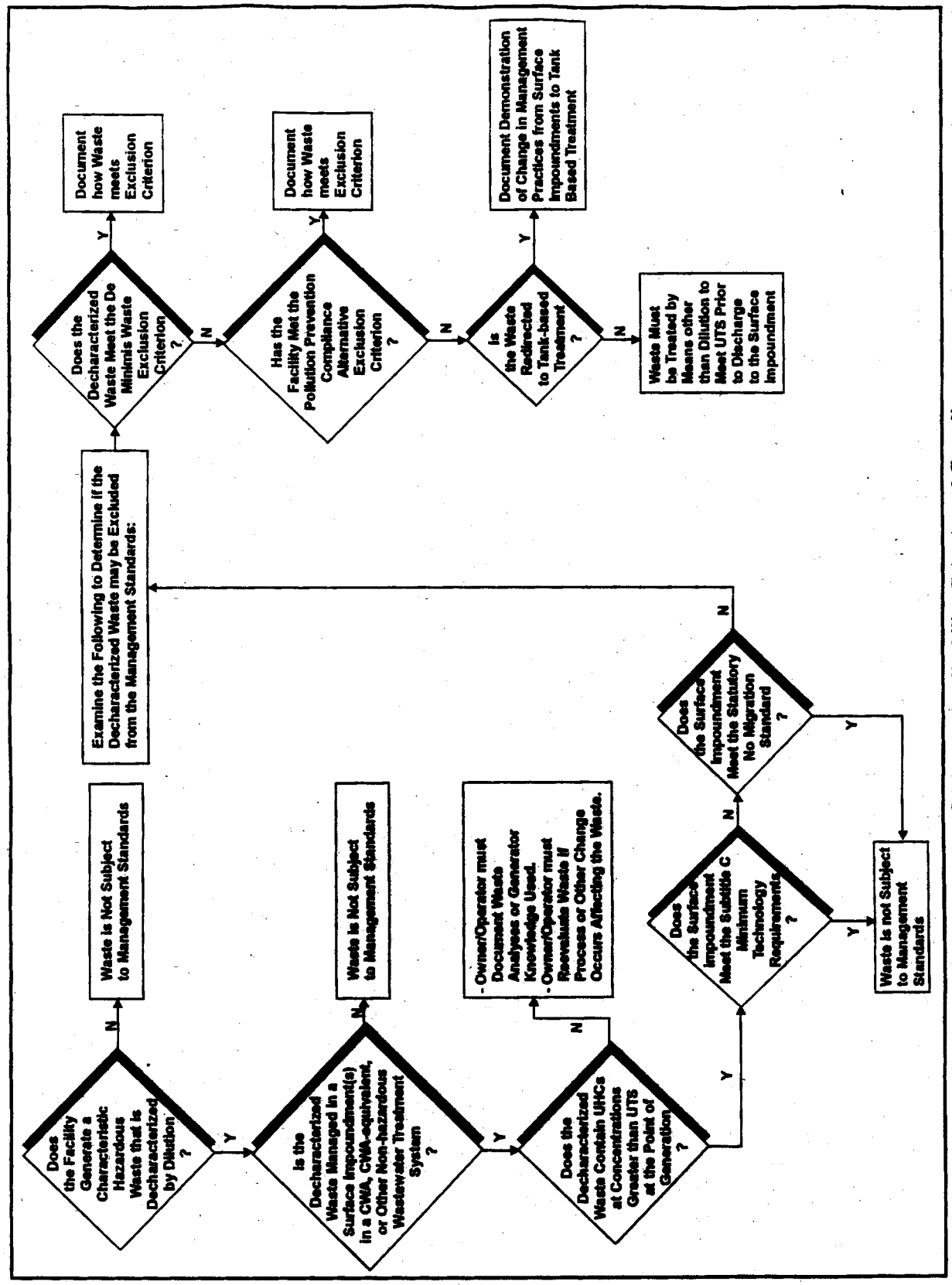

Figure 5: Option 3 - Applicability Criteria and Compliance Alternatives for Surface Impoundments Accepting Decharacterized Wastes

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It should be noted that this option is already available as a means of complying with any of the requirements in Option 2. The question here is whether this should be the only alternative allowed. EPA's view is that it should not be the exclusive approach, for reasons of law and policy. This approach destroys the very accommodation between the CWA and RCRA upheld by the D.C. Circuit. It would invalidate impoundment-based treatment systems, even if such treatment systems can be shown to be equivalent to RCRA treatment within the meaning of the opinion. Since the court hinted that RCRA ''requires'' some accommodation with the CWA on this issue (976 F. 2d at 20), there is some question whether EPA even has the authority to mandate the approach. The Agency believes the approach unwise in any case, and has so stated in the Third rule itself as well as later discussions. Very simply, impoundment-based wastewater treatment systems can be effective means of treating decharacterized wastewaters, and can do so without undermining core values of RCRA and the LDR program. Consequently, such treatment should not be effectively invalidated by requiring all treatment of characteristic wastes to occur upstream of impoundments.

II. Proposal Not to Ban Nonamenable Wastes From Land-Based Biological Treatment Systems

Summary: EPA believes that prohibiting certain decharacterized wastes from land-based wastewater treatment systems on the basis of whether the constituents in those wastes are ''amenable'' to biological treatment is unnecessary at this time. Instead, EPA is proposing to prevent excessive environmental contamination of hazardous constituents that leave surface impoundments. Technical obstacles present another reason not to ban nonamenable wastes.

A. Background

The Environmental Technology Council (ETC) has suggested that EPA develop regulations restricting Subtitle D surface impoundment disposal of organic compounds and metals resistant to biological degradation in these units. The Chemical Manufacturer's Association (CMA) provided EPA with comments on ETC's suggested approach. These strategies focused on identifying those constituents which are relatively resistant to biological degradation in order to develop regulations setting maximum acceptable concentrations for these constituents in surface impoundment influent. The Phase III proposed LDR rule summarizes the ETC and CMA positions, and discusses several technical issues (41 FR 11717). ETC's comment is included in the rulemaking docket for the Phase III proposal.

B. Rationale for Proposing Not to Ban Nonamenable Wastes From Biological Treatment Systems

EPA has carefully considered the policy and technical issues raised by the suggestion to ban nonamenable wastes from biological treatment impoundments. The Agency believes that the key issue of whether such impoundments serve as transfers of nonamenable constituents to air, leaks, sludges, or discharges to surface waters is best addressed by the Phase III end-of-pipe limits on constituents, coupled with the options in Section I of this preamble. The provisions in Phase III and Phase IV are designed to protect human health and the environment from hazardous constituents in surface impoundments, therefore, there is no need to regulate nonamenable wastes. Additionally, if constituents are not excessively migrating to ground water through leaks, to air through emissions, adsorbing onto sludge sediments, or being discharged at the end of pipe, then EPA can be reasonably certain that treatment in the impoundment is adequate.

Furthermore, EPA believes that the technical impediments to banning nonamenable wastes from biological treatment impoundments are significant. First, the design and operating conditions of biological treatment can vary widely. Second, the ''amenability'' of constituents at the point of generation may not reflect the ultimate amenability in the biological treatment system. Finally, variations in the influent stream composition, acclimation of the biomass, and the effect of other constituents add another level of uncertainty to the process of determining the amenability of a particular waste stream. These multiple uncertainties make an accurate assessment of amenability on the level of the stream or of the constituent extremely difficult.

III. Improvements to Land Disposal Restrictions Program

A. Clean Up of Part 268 Regulations

In today's rule, EPA is proposing to ''clean up'' existing regulatory language that is outdated, confusing, or unnecessary. Some sections are clarified, some have been condensed, while others are altogether removed. Comments are solicited on the proposed changes that follow.

1. Section 268.4

Section 268.4(a)(2)(iv) would be changed to read, ''*Recordkeeping.* The sampling, analysis, and recordkeeping provisions of §§ 264.13 and 265.13 apply.'' The existing language in § 268.4 duplicates the substantive requirements of §§ 264.13 and 265.13. Referencing the §§ 264.13 and 265.13 requirements in § 268.4 clarifies that there are no additional recordkeeping requirements at § 268.4; the general facility recordkeeping requirements apply, thus the LDR program does not add additional burden.

2. Section 268.5

Section 268.5(e) would be amended to clarify that an applicant could be granted additional time (up to one year) beyond the one-year case-by-case extension; when first applying for the case-by-case extension, the applicant would be required to show that the additional time (beyond the extension in the first year) would be necessary to provide capacity to treat the applicant's waste. Comments are requested on this issue.

3. Section 268.7

Much of the language specifying what must be included on LDR notifications at § 268.7 needs revision; therefore, this section is proposed to be rewritten to reflect changes, clarify the existing notification requirements, and generally simplify the requirements for generators of hazardous waste. The proposed changes in § 268.7(a) would result in renumbering of the paragraphs. The new numbering scheme for this section is used in this discussion. Also, the generator paperwork requirements are proposed to be consolidated into a table at § 268.7(a)(4), and the treatment facility requirements into a table at § 268.7(b)(4).

References in Part 268 to LDR treatment standards that have previously been found in tables in §§ 268.41, 268.42, and 268.43, are proposed to be changed to refer to the consolidated table in § 268.40—Treatment Standards for Hazardous Wastes.

References to § 268.32 and RCRA 3004(d), California List wastes, are removed, because the treatment standards for these wastes have been superseded by subsequent treatment standards.

In § 268.7(a)(3), the rule requires that to each receiving land disposal facility, a notification must go with each shipment of restricted waste that meets

the LDR treatment standards as generated. The notice must identify the waste and applicable subcategories, the manifest number, and other information, along with a certification statement saying that the waste meets the treatment standards. As a streamlining measure in today's rule, the Agency is proposing that when a generator whose waste meets the appropriate treatment standards, and the composition of these wastes or the process generating the waste does not change, then they are only required to submit a one-time notification and certification to the receiving facility. A copy of the notification and certification must be kept in the generator's file. If the waste changes, then the generator must send a new notice and certification to the receiving facility, and place a copy in their files.

In § 268.7(a)(5), if generators are managing prohibited wastes in tanks, containers, or containment buildings, they are required to submit a waste analysis plan to the EPA Regional Administrator or authorized State for their review of the testing plan. As a streamlining measure, EPA is proposing to delete the requirement that generators submit the waste analysis plans to States and Regions. Comments are requested on this issue.

The record retention time period in § 268.7(a)(8) is proposed to be changed from five to three years, in order to make LDR requirements consistent with other RCRA record retention periods.

The lab pack notification requirements of § 268.7(a)(8) are proposed to be streamlined to include only the requirements of §§ 268.7(a)(2), 268.7(a)(6), and 268.7(a)(7). This is possible because the alternative treatment standard for lab packs specifies a method of treatment rather than concentration levels that would have to be monitored after treatment. There is, therefore, no need to know whether the wastes in the lab packs are wastewaters or nonwastewaters or are hazardous debris (these are data items proposed to be deleted from the lab pack notification). The Agency solicits comments on this assumption.

In § 268.7(b), the first sentence—Treatment facilities must test * * * as required by § 264.13 or § 265.13—is proposed to be clarified so that it is more obvious that § 264.13 contains the requirements for permitted treatment, storage and disposal facilities and § 265.13 contain the requirements that apply to interim status facilities.

In addition, the sentence, ''* * * test method described in appendix I of this part or using any methods required by generators under § 268.32 of this part * * *'' is changed to read, ''* * * test method described in 'Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,' EPA Publication SW–846.'' Specific reference to EPA Publication SW–846 for the Toxicity Characteristic Leaching Procedure gives the regulated community a more direct reference for details of the test method. Furthermore, the Agency is proposing to add a table that more clearly indicates the items to be included on notifications under this section, and is changing all references to §§ 268.41, 268.42, and 268.43 to refer to the Table of Treatment Standards in § 268.40.

In section 268.7(c)(2), the sentence, ''* * * test method described in appendix I of this part or using any methods required by generators under § 268.32 of this part * * *'' is changed to read, ''* * * test method described in 'Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,' EPA Publication SW–846.'' Specific reference to EPA Publication SW–846 for the Toxicity Characteristic Leaching Procedure gives the regulated community a more direct reference for details of the test method.

6. Section 268.9

In section 268.9, paragraphs (a), and (b) are proposed to be revised to clarify how wastes should be identified when they are both listed and characteristic wastes. The revisions do not propose any substantive changes to these paragraphs. The existing regulations require that for the LDR notification, a waste must be identified as a listed waste and also as a characteristic waste unless the listed waste has a treatment standard for the constituent or addresses the hazardous characteristic that causes the waste to also be characteristically hazardous. If the listed waste has treatment standards that address all characteristics, then the characteristic waste codes do not attach.

In paragraph (d)(1)(ii), the language has been edited to clarify that if all underlying hazardous constituents reasonably expected to be present in a characteristic waste will be monitored, then the generator need not list any of them on the LDR notification. If, however, a subset of underlying hazardous constituents will be monitored, they must be included on the LDR notification. This is not a substantive change, because such language was already placed in 40 CFR 268.7(a) in the technical correction to the Phase II final rule (60 FR 245, January 3, 1995).

5. Sections 268.30–268.37

Sections 268.31–268.37 are proposed to be removed because the treatment standards for wastes in these sections are now in effect, thus all these wastes are now prohibited from land disposal. The sections are, thus, no longer needed and are proposed to be removed. Old § 268.30 is proposed to be replaced by a new section that provides the prohibition dates of the wastes included in this proposed rule.

6. Appendices

Appendix I is proposed to be removed and reserved because the TCLP test method reference to SW–846 will be incorporated into the text of the regulatory language.

Appendix II to Part 268 is also proposed to be removed and reserved because it incorrectly refers to treatment standards in §§ 268.41, 268.42, and 268.43 (they are now in § 268.40); furthermore, there is no longer a need for a reference to the solvent treatment standards.

Appendix III is proposed to be removed and reserved because the California List treatment standards have been superseded by Universal Treatment Standards, thus there is no need for a listing of halogenated organic compounds because they are California List wastes.

Appendix VI is proposed to be amended to clarify that characteristic wastes that also contain UHCs must be treated not only by a ''deactivating'' technology to remove the characteristic, but also treated to achieve the UTS for UHCs.

Appendix VII is proposed to be removed and reserved because all the wastes in the table have treatment standards now in effect, thus there is no need to know the effective dates, waste by waste. Likewise, Appendix VIII is proposed to be removed and reserved because the effective dates for these wastes when injected into deep injection wells are past, thus are no longer needed.

Appendix IX is proposed to be removed because as of the Phase IV rule, all characteristic metal treatment standards are based on toxicity using the TCLP rather than the Extraction Procedure (EP). There is no longer any need for a reference to the EP.

Appendix X is proposed to be removed and reserved because it summarizes paperwork requirements that are proposed to be changed in the Phase III proposal and this proposal. Furthermore, if the Agency finalizes the paperwork tables discussed in this section of the preamble in §§ 268.7(a)

and 268.7(b), there is no need for summary tables in the appendix.

The Agency is committed to identifying new ways the LDR program can be simplified, and will continue to seek additional opportunities for such streamlining efforts in the future.

B. Simplification of Treatment Standard for Waste Code F039

Summary: Today's proposal simplifies the presentation of the treatment standard for multisource leachate, which is waste code F039.

Discussion: With the promulgation of the Universal Treatment Standards (UTS) in the Phase II rule (59 FR 47982), there is no longer a need for the separate list of constituents for F039 which currently appears in the table titled ''Treatment Standards for Hazardous Wastes'' at 40 CFR 268.40. EPA proposes that F039 meet all the UTS for the constituents at § 268.48, with the exceptions of fluoride, vanadium, and zinc. In other words, while F039 remains the waste code for leachate from hazardous waste disposal facilities, the treatment standards for wastewater and nonwastewater forms of individual constituents now reference the UTS (§ 268.48), with the exceptions of fluoride, vanadium, and zinc.

C. POLYM Method of Treatment for High-TOC Ignitable D001 Wastes

Summary: EPA proposes to add polymerization (POLYM) to the set of required methods of treatment designated Best Demonstrated Available Technology (BDAT) for high-TOC ignitable (D001) wastes resulting from commercial polymerization processes.

Discussion: Polymerization (POLYM) processes convert deactivated waste into a chemically stable plastic in the same manner that commercial plastics were formed with the reagent which is being disposed of as a high-TOC D001 waste.

The National Marine Manufacturer's Association contacted EPA with concerns that the May 1993 Interim Final Rule (58 FR 29860) prohibited the practice of polymerizing excess polyester/styrene waste left over from the manufacture of modular shower stalls and recreational boats. The prohibition was actually established in the 1990 Third Third (55 FR 22520). In these manufacturing processes polyester/styrene reacts with methyl ethyl ketone peroxide in a mold to form fiberglass. The ignitable waste polyester/styrene and MEK peroxide are the wastes of concern.

Waste polyester/styrene monomers and MEK peroxide are commonly disposed of by reacting small quantities together to create fiberglass scraps. The waste polyester/styrene monomers and MEK peroxide are currently regulated as high-TOC ignitable wastes for which the current standard is treatment by CMBST (combustion) or by RORGS (recovery of organics) before land disposal. Neither CMBST nor RORGS allows for polymerization of high-TOC ignitable wastes into inert materials which do not exhibit any characteristics of toxicity, ignitability, corrosivity or reactivity. The Agency believes that the ongoing practice of polymerizing characteristic wastes to a noncharacteristic inert mass adequately protects human health and the environment.

Today's rule proposes POLYM as an alternative to CMBST or RORGS for those high-TOC D001 wastes which are chemical components in the manufacture of plastics. POLYM requires the addition of a polymerizing component or catalyst to the discarded high-TOC D001 monomer stream intended for land disposal. POLYM is defined as ''Formation of complex high-molecular weight solids through polymerization of monomers in high-TOC D001 nonwastewaters.'' The Agency notes that the accumulation time provisions for on-site storage of hazardous waste in tanks (40 CFR 262.34) allow facilities to store waste monomers and catalysts up to 90 days after the ignitable components are discarded provided that these wastes are kept in adequate tanks. (40 CFR 262.34(a)(1)(ii)).

IV. Exclusion for Recycled Wood Preserving Process Wastewaters

Summary: In response to wood preserving industry concerns that production wastewaters being reclaimed are improperly classified as solid waste under RCRA Subtitle C, EPA is providing an opportunity for the industry to supply information that could potentially form the basis for an industry-wide variance.

Discussion: EPA has recognized that certain wastes from wood preserving and surface protection, most notably drippage, are reclaimed and then returned to the wood preserving process for reuse (see 53 FR 53311). The Agency received numerous comments to its proposed wood preserving rule claiming that waste recycling and reuse practices at wood preserving and surface protection plants should be excluded from the definition of solid waste.

In its December 6, 1990 wood preserving listing, EPA rejected that claim. The Agency stated that the current regulations correctly classify drippage and wastewaters from the wood processing industry destined for reclamation as solid waste since the capture and conveyance mechanisms used in the operation do not meet the terms of the § 261.4(a)(8) closed-loop exclusion (see 53 FR 50460). While rejecting any broad attempt to exclude these wastes from the definition of solid waste, the Agency did point out a variance provision in the regulations, § 260.30 and § 260.31(b), that could apply to the wood preserving industry. The provision allows for variances to be granted on a case-by-case basis to individual facilities, provided that an EPA Regional Administrator or authorized State Director makes a determination that a particular reclamation operation is an essential part of the production process, taking into account a number of criteria, including how carefully the material is handled before it is reclaimed (see 53 FR 50460).

The Agency's rationale for creating the § 260.30 and § 260.31(b) variance was that it may be inappropriate to regulate a reclamation process under RCRA when the process is an essential part of production, assuming the secondary materials being reclaimed are not part of the waste disposal problem. Section 260.31(b) lists a number of criteria to be considered by a regulator when determining whether a reclamation operation meets the terms of this provision. Although this variance was originally intended to be granted on a case-by-case basis, if these criteria can be demonstrated on an industry-wide basis, EPA will consider a conditional exclusion. Comments are requested on the extent to which the reclamation of production wastewaters from the wood preserving industry meet the criteria found in § 260.31(b).

Section 260.31(b)(3), which requires the regulator to take into account ''the extent to which the material is handled before reclamation to minimize loss,'' is of particular interest in evaluating this reclamation operation. In the wood preserving industry, this would certainly apply to releases from a drip pad, clearly a waste and clearly a potential part of the waste management problem (damage cases described in 53 FR 53323), and the extent to which such releases could be prevented. It appears that prevention of drip pad releases could be adequately achieved through compliance with 40 CFR 264, Subpart W (drip pads). EPA is interested in receiving comments on any alternative and perhaps better ways that the industry might meet the § 260.31(b)(3) standard.

As part of an ongoing effort to revise the current definition of solid waste, EPA is taking a close look at the regulations for on-site recycling. In the

meantime, we are willing to consider quicker action on wood processing production wastewaters, provided we receive adequate information to make an industry-wide determination that the reclamation operation is an essential part of production and that the secondary materials being reclaimed are not likely to be a part of the waste disposal problem.

V. Treatment Standards for Newly Listed and Identified Wastes

A. Background

The Hazardous and Solid Waste Amendments (HSWA) to RCRA, which were enacted on November 8, 1984, largely prohibit the land disposal of untreated hazardous wastes. RCRA requires EPA to promulgate treatment standards for a waste within six months after determining it is hazardous (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.). Today's notice proposes treatment standards for two of those waste groups: wood preserving wastes and metal wastes that are considered hazardous under the revised Toxicity Characteristic (TC).

B. Treatment Standards for Soil Contaminated With Newly Listed Wastes

The Agency has stated a presumption that the treatment standards for as-generated wastes are generally inappropriate or unachievable for soils contaminated with hazardous wastes, within the meaning of 40 CFR 268.44(a) (see 55 FR 8759–60, March 8, 1990). It has been the Agency's experience that contaminated soils are significantly different in their treatability characteristics from the wastes that have been evaluated in establishing the BDAT standards, and thus, will generally qualify for a treatability variance under 40 CFR 268.44. For guidance on treatability variances for soils, see the EPA Fact Sheet entitled ''Regional Guide: Issuing Site-Specific Treatability Variances for Contaminated Soils and Debris from Land Disposal Restrictions'' (OSWER Publication 9839.3–08FS). For RCRA actions, the Regional Administrator was delegated the authority to deny or grant these variances in a non-rulemaking procedure under 40 CFR 268.44(h) on April 22, 1991. These variances may be granted by State agencies in States authorized for § 268.44. Variance authority for CERCLA actions is discussed in LDR Guides 6A (revised Sept. 1990) and 6B (OSWER 9347.3–06FS and 9347.3–06BFS).

EPA is proposing a national capacity variance for soil and debris contaminated with Phase IV newly listed wastes. If the capacity variance is made final, any site-specific treatability variance would not be necessary during the period the capacity variance is in effect.

C. Treatment Standards for Wood Preserving Wastes[2]

Summary: NEPA is proposing to apply Universal Treatment Standards (UTS) to wood preserving wastes (F032, F034, and F035).

1. Identification of Wastes

F032—Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations.[3]

F034—Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations.

F035—Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium.

Wastes from the wood preserving industry, F032, F034, and F035, were listed as hazardous on December 6, 1990, (see 55 FR 50450). EPA is proposing to regulate specific constituents from each of these hazardous wastes groups. (A list of the hazardous constituents proposed for regulation are found within the Table at the end of this preamble discussion.) These wastes are generated during the treatment or preservation of wood products such as poles, crossarms, timbers, rail road ties, and fence posts. Pentachlorophenol, creosote, and inorganic arsenical and/or chromated salts are the primary active ingredients that are used to preserve wood products. The application of these chemicals generate wastewaters, process solid residuals, preservative drippages, and spent formulations. The listing document for F032, F034, and F035 provides additional information on the processes generating each of these wastes.

2. Proposed Treatment Standards

After reviewing the available characterization data on untreated and treated wastes that are believed to be at least as difficult to treat as F032, F034, and F035, EPA has determined that UTS are technically achievable for the constituents proposed for regulation in F032, F034, and F035. (The BDAT background document provides information on EPA's rationale for developing and applying UTS to these wastes. Also see LDR Phase II final rule, 59 FR 47982, September 19, 1994, for further discussion of UTS.) EPA is thus proposing that each constituent proposed for regulation in F032, F034, and F035 comply with its applicable UTS in the treatment standard table at 40 CFR 268.40, as a prerequisite for land disposal.

EPA believes that this proposal is consistent with EPA's efforts to ease compliance burdens by setting one treatment standard for the same regulated constituent in various wastes. Wood preserving facilities currently manage these hazardous wastes at commercial hazardous waste management facilities that manage wood preserving wastes as well as other hazardous wastes prohibited from land disposal. These commercial treatment facilities will likely commingle wood preserving wastes with other similar wastes in treatment trains that achieve UTS. Furthermore, the data available on the treatment of wastes believed to be as difficult, or more difficult, to treat as F032, F034, and F035 support the achievability of UTS.

3. Review of Available Characterization Data

EPA has reviewed available characterization data on F032, F034, and F035 from documents supporting the listing of these wastes as hazardous. EPA has also used additional data gathered by EPA on F035 during 1991 (EPA's 1991 study), which include data on untreated and treated F035 wastes (with the exception of one study that describes the bench scale treatment of a CCA formulation believed to simulate the treatment of F035 wastewaters) from three wood preserving facilities; from untreated and treated F035 wastes commingled at a hazardous waste treatment facility prior to their

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[2] These listings do not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

[3] This treatment standard would apply except where potentially cross-contaminated wastes have had the F032 waste code deleted in accordance with section 40 CFR 261.35 and where the generator does not resume or initiate use of chlorophenolic formulations.

stabilization with lime and cementious agents; from an EPA in-house treatability study of F035 via stabilization with lime, fly ash, and cementious agents; and, from an EPA in-house feasibility study to selectively remove arsenic, chromium, and copper from a synthetic simulated F035 wastewater.

Other literature consulted includes EPA's *Preliminary Data Summary for the Wood Preserving Segment of the Timber Products Processing Point Source Category,* September 1991 (EPA 440/l–91/023) (referred to here as the 1991 Preliminary Data Summary of the Wood Preserving Industry (1991 PDSWPI)). Other documents reviewed include 1986–1990 summary abstracts on the treatment of F032, F034, and F035 contaminated soils at Superfund sites, other literature published on the treatment of wood preserving and petroleum refining contaminated soils, and data submitted by commenters on the Advanced Notice of Proposed Rulemaking of October 21, 1990 (ANPRM) (see 56 FR 55160) and the LDR Phase II rule of September 19, 1994 (59 FR 47980).

4. Determination of Best Demonstrated Available Technology (BDAT)

a. Nonwastewaters. For nonwastewater forms of F032 and F034, the proposed treatment standards of each of the organic constituents are based on the combustion of wastes believed to be as difficult, or more difficult, to treat as F032 and F034. For metals in nonwastewater forms of F032, F034, and F035, EPA has determined that stabilization is BDAT for chromium (total), and that vitrification is BDAT for arsenic.

b. Wastewaters. For wastewater forms of F032 and F034, the proposed UTS for each organic constituent are based on treatment technologies such as biological treatment, steam stripping, carbon absorption, or by a train of two or more wastewater treatment technologies. The proposed treatment standards for metals in wastewater forms of F032, F034, and F035 are based on lime addition followed by sedimentation, and filtration for arsenic and in chemical precipitation followed by sedimentation for chromium. Like chromium, copper, lead, and zinc are also amenable to chemical precipitation followed by filtration.

EPA believes that the treatment technologies supporting the proposed UTS are also BDAT for F032, F034, and F035. This is because they are demonstrated for wastes as difficult or more difficult, to treat. EPA also believes that none of the hazardous constituents in F032, F034, and F035 are likely to interfere with the treatment of the constituents proposed for regulation. In addition, EPA reviewed the performance of other thermal and non-thermal treatment or recovery technologies demonstrated on wastes similar to F032, F034, and F035. EPA believes that these other technologies can reach or can be optimized to meet the proposed UTS limits. Therefore, the Agency is not prohibiting the use of other technologies capable of achieving the proposed treatment standards except for those constituting land disposal or impermissible dilution.

5. Proposed Regulation of Dioxin and Furan Constituents in F032

EPA has found in F032 homologues of polychlorinated di-benzo-p-dioxins (PCDDs) and polychlorinated di-benzofurans (PCDFs). These homologue-isomers are a result of impurities from formulations that employ chlorophenolic chemicals such as pentachlorophenol (PCP) and other chlorinated aromatic hydrocarbons. EPA is proposing treatment standards that would require meeting a concentration that does not exceed l ppb (also expressed as ug/kg) for all the PCDD and PCDF homologue and isomer constituents proposed for regulation. EPA also requests data on the treatment of these constituents.

Commenters to the ANPRM of April 1991, were concerned that the selection of PCDD and PCDF as hazardous constituents in nonwastewater forms of F032 could result in commercial treatment facilities refusing to manage F032 wastes due to public sensitivities about these chemicals. Some commenters urged EPA not to regulate PCDD and PCDF but rather, to regulate surrogate constituents such as pentachlorophenols, gross parameters such as total suspended solids and oil and grease levels, or precursor constituents of PCDD and PCDF such as ''hexachlorobenzene, 1,2,4-trichlorobenzene, and 1,2,4,5-tetrachlorobenzene''. Only one commenter, however, submitted data on the use of alternate constituents. The data consisted of the influent characterization data for wastewaters treated via biological treatment and the end-of-pipe treated effluents. The data did not include the concentrations of PCDD and PCDF that were achieved in the biosludges and end-of-pipe treated wastewater effluents; thus EPA is unable to determine how the monitoring of alternative constituents or gross parameters can ensure the destruction of PCDD and PCDF constituents.

Other commenters requested that EPA defer or forgo the regulation of PCDD and PCDF in F032. They believe that regulation of other hazardous constituents in F032 will provide PCDD and PCDF with adequate treatment. No data were provided to support these statements.

EPA believes that the regulation of PCDD and PCDF is necessary to ensure their destruction. PCDD and PCDF are relatively insoluble in wastewaters. Because they tend to adhere to suspended particles, they may go untreated through wastewater treatment systems. Also, PCDD and PCDF can be solubilized in oils, and thus may go untreated through biological treatment systems. In contrast, EPA has data from the combustion of hazardous wastes and soils which shows that the combustion of PCDD- and PCDF-constituents wastes in two stage combustion devices leaves behind incineration ash and other residues with PCDD and PCDF levels below 1 ppb. Other performance data include residues from other thermal destruction devices such as supercritical oxidation (Hubber Process) and infrared incineration (Shirco reactor).

Another consideration in proposing regulation of PCDD and PCDF is that FO32 can potentially contain concentrations of up to 300 ppb in wastewaters and between 1 ppb to 140,000 ppb in nonwastewaters. These concentrations become more significant if they are allowed to go untreated in non-thermal treatment technologies such as separation and filtration. EPA has identified one commercial facility currently permitted to combust wastes that may have PCDD and PCDF constituents with concentrations one to two orders of magnitude higher than those levels found in F032.

For nonwastewater forms, the proposed treatment standards are based on the performance of combustion. For wastewater forms, the proposed treatment standards are based on the performance of biological treatment. As mentioned earlier, other aggressive oxidation technologies such as infrared incineration (Shirco process), supercritical oxidation (Hubber process), and pyrolytical destruction devices can also achieve the proposed treatment standards. EPA requests comments on the use of non-thermal treatment technologies that have been optimized to treat PCDD and PCDF in wastes as difficult to treat as F032. In particular, EPA requests comments on whether non-thermal technologies such as chemical dechlorination via the use of the Alkaline Polyethylene Glycolate (APEG or KPEG) process or the Based Catalyzed Decomposition process and

ultraviolet (uv) photolysis are also capable of achieving limits at or below the proposed UTS limits for dioxins and furans in wastewater and nonwastewater forms of F032. EPA has been testing the applicability of the BCD Process and APEG on various chlorinated wastes and contaminated soil, and wood preserving wastes. EPA expects to make the results of the BCD treatability studies available to the public in the fall of 1995.

PROPOSED BDAT STANDARDS FOR F032, F034, F035

[Wastewaters and nonwastewaters]

Constituent	Wastewaters maximum for any 24 Hr. composite	Nonwastewaters maximum for any grab sample	Constituents proposed for regulation		
	Total composition (mg/l)	Total composition (mg/kg)	F032	F034	F035
Phenols:					
Phenol	0.039	6.2	x		
2,4–Dimethylphenol	0.035	14.0	x		
2,4,6–Trichlorophenol	0.035	7.4	x		
2,3,4,6–Tetrachlorophenol	0.035	7.4	x		
Pentachlorophenol	0.089	7.4	x		
PAHs:					
Acenaphthene	0.059	3.4	x	x	
Anthracene	0.059	3.4	x	x	
Benz(a)anthracene	0.059	3.4	x	x	
Benzo(a)pyrene	0.061	3.4	x	x	
Benzo(k)fluoranthene	*0.11	*6.8	x	x	
Chrysene	0.059	3.4	x	x	
Dibenz (a,h) anthracene	0.055	8.2	x	x	
Fluorene	0.059	3.4	x	x	
Indeno(1,2,3-c,d)pyrene	0.0055	3.4	x	x	
Naphthalene	0.059	5.6	x	x	
Phenanthrene	0.059	5.6	x	x	
Pyrene	0.067	8.2	x	x	
Dioxins and Furans:					
Tetrachlorodibenzo-p-dioxins	0.000063	0.001	x		
Pentachlorodibenzo-p-dioxins	0.000063	0.001	x		
Hexachlorodibenzo-p-dioxins	0.000063	0.001	x		
Tetrachlorodibenzofurans	0.000063	0.001	x		
Pentachlorodibenzofurans	0.000035	0.001	x		
Hexachlorodibenzofurans	0.000063	0.001	x		
Inorganics:					
Arsenic	1.4	5.0	x	x	x
Chromium (total)	2.77	0.86	x	x	x

*Because Benzo(b)fluoranthene and Benzo(k)fluaranthane coelute on gas chromatography columns, this constituent is regulated as a sum of the two compounds.

D. Treatment Standards for Toxic Characteristic Metal Wastes

1. Rationale for Applying Universal Treatment Standards (UTS) to Toxic Characteristic Metal Wastes (D004–D011)

In the Third Third LDR Rule (55 FR 22520), EPA established treatment standards for the metal wastes that were characteristic by the Extraction Procedure (EP) test. Since promulgation of the TC rule in September 1990, the Toxic Characteristic Leaching Procedure (TCLP) is used to determine whether a metal waste is characteristic. Wastes that are characteristic by the TCLP but not by the EP are considered newly identified wastes and are not currently subject to the land disposal restrictions. Today, EPA is proposing to apply treatment standards to all characteristic metal wastes. In addition, the Agency is proposing to change the treatment standard levels for characteristic metal wastes from those established in the Third Third rule at the characteristic levels to previously promulgated UTS levels for metal constituents. Furthermore, when promulgated, the characteristic metal wastes must be treated not only to meet today's proposed treatment standards, but also to meet treatment standards for any UHCs reasonably expected to be present in those wastes at the point of the wastes' generation. This approach is consistent with the promulgated requirements for other characteristic wastes (D012–D043) (see 59 FR 47982 September 19, 1994).

EPA promulgated the UTS for organic, metal, and cyanide constituents on September 19, 1994 (see 59 FR 47982). The UTS eliminated differences in concentration limits for the same constituent in order to provide a better assessment of treatability, to reduce confusion, and to ease compliance and enforcement. (The complete table of UTS is located at 40 CFR 268.48 and the levels have been incorporated in the treatment standard table at § 268.40.) The UTS replaced the existing metal constituent treatment standards for all listed wastes, and constituted applicable levels for underlying hazardous metal constituents (metal UHCs) in ignitable, corrosive and TC organic wastes. As explained above, they did not apply to TC waste codes D004–D011, nor did they replace the treatment standards promulgated in the Third Third rule for EP metals.

EPA performed a comprehensive reevaluation of the available treatment performance data from both listed and characteristic wastes for all metal constituents in the UTS table in order to

determine whether the metal UTS levels are appropriate to transfer to TC metals. The Agency has determined that a transfer of UTS is appropriate based on treatment levels achieved for the characteristic wastes and the metal concentrations in untreated wastes used for UTS being more highly contaminated than the characteristic wastes. Some of the historic data on treatment of characteristic wastes simply reflects a design to remove the characteristic, not a true measure of the treatability by stabilization and HTMR (see ''BDAT Background Document for Toxicity Characteristics Metal Wastes D004–D011)'' in the RCRA docket). EPA is proposing that the metal UTS are the LDR treatment standards for characteristic metal wastes. This means, in effect, that most of the metal treatment standards are proposed to be changed, however, a few treatment standards are not. Tables at the end of this section provide the old level, the new level, and whether or not the treatment standard is proposed to be changed.

The UTS for metal nonwastewaters can be achieved by high temperature metals recovery (HTMR) or stabilization. HTMR is a common technology for the extraction and recovery of metals from complex matrices. HTMR is based primarily on pyrometallurgical separation principles. HTMR has been demonstrated to be applicable to almost all metals in a relatively wide variety of matrices. This is primarily due to the thermodynamic and kinetic reactivity of these metals (and other inorganics present) at the high temperatures and oxidation states in the unit. Depending on the type of HTMR unit and the temperatures utilized, nonwastewater residues that would be classified as slags, are likely to be produced.

Conventional stabilization technologies include cementious and pozzolanic stabilization with the potential addition of specialized reagents for the enhancement of structural stability, curing time, and/or reduced leachability. The reduction in leachability of the hazardous metal constituents of the wastes is accomplished by the formation of a lattice structure (i.e., chemical bonds) that binds or entraps the metals in a solid matrix. Before addition of the stabilizing agents, the forms of the metals in the wastes need to identified. Often pretreatment involving chemical conversion of the metals in the wastes to a more favorable oxidation state or to a different metallic salt must be performed or the stabilization could be relatively ineffective or incomplete.

2. Proposed Revision of UTS for Beryllium

In today's rule, EPA is proposing to change the UTS for beryllium to 0.04 mg/l TCLP. After UTS were promulgated, additional data on TC metals were submitted to the Agency. These grab sample data were from a HTMR facility and were comprised of 480 data points from their in-house metal treatment processes. These data were submitted as ''Confidential Business Information.'' While UTS nonwastewater limits for metals specify a grab sample, the data used to develop the standards included both grab and composite samples. These data demonstrated HTMR could not necessarily achieve the limits using grab samples. Out of the 40 data points for beryllium, five exhibited levels exceeding the UTS level of 0.014 mg/l TCLP. A log-normal statistical analysis, based on QA/QC Methodology, was performed on these beryllium data points. Based on this analysis, the Agency is proposing to modify the beryllium UTS level to 0.04 mg/l TCLP. The Agency believes that this proposed level provides assurance that metal nonwastewater standards can comply with UTS using grab samples.

The Agency also reevaluated the new cadmium data submitted. Based on a log-normal statistical analysis the cadmium data, the UTS level of 0.19 mg/l TCLP is essentially at the 99th percentile. The Agency, therefore, does not see a need to modify this standard and is not proposing a change in the previously promulgated cadmium UTS level. However, due to the two data exceedances out of the 40 data point samples submitted, the Agency is soliciting further data.

The issue of grab versus composite sampling has been raised as needing clarification. As previously promulgated, these metal treatment standards specify grab samples. If grab sampling creates inconsistencies in achieving UTS levels for a treatment process, the facility should evaluate its process and submit data to EPA in support of their treatment process (40 CFR 268.41 and 55 FR 22539 June 1, 1990). The use of grab versus composite standards does not mean more frequent sampling is necessary. Grab samples normally reflect maximum process variability, and thus will reasonably characterize the range of treatment system performance. The sampling analysis for both wastewater and nonwastewater is composite and grab respectively (40 CFR 268.41 and 268.43).

3. Treatment Standard for Previously Stabilized Mixed Radioactive and Characteristic Metal Wastes

Some radioactive wastes which exhibit a hazardous characteristic for a metal have been stabilized to meet the existing LDR standards, but may not be land disposed until after Phase IV is finalized. Such circumstances could result in treated wastes not meeting the revised standards. For example, as part of the West Valley Demonstration Project, approximately 21,000 drums of mixed radioactive/formerly metal characteristic wastes have been stabilized to meet the current LDR treatment standards for metals.) The wastes at the West Valley site are being stored awaiting development of disposal capacity. Because of siting difficulties for radioactive wastes, it is expected to take more than three years to develop disposal capacity. There is a good possibility that when these treated wastes are disposed, the Phase IV final rule will be in effect and the metal portion will be subject to the more stringent Universal Treatment Standard levels. If this were the case, the wastes would require re-treatment to achieve UTS prior to disposal. Such a practice would present significant risks. Opening the drums and grinding the already treated mass of stabilized waste to re-treat could expose workers, and possibly others, to unacceptable levels of metal containing dusts and radioactivity.

The Agency believes the prior stabilization of such wastes achieves the statutory minimized threat standard, and to require re-treatment would not only minimize threat, but could increase it. Therefore, the Agency is proposing to allow characteristic metal mixed wastes, that have undergone stabilization prior to the effective date of the Phase IV final rule, to comply with the LDR metal standards that were in effect at the time the waste was stabilized. Mixed radioactive/characteristic metal wastes that are stabilized after the effective date of Phase IV would be subject to the metal treatment standards in the Phase IV rule.

PROPOSED CHANGES FOR TC METALS (NONWASTEWATER) (D004–D011)

TC metal	Old TC level (mg/l TCLP)	New UTS level (mg/l TCLP)	N.C.=no change
Arsenic (D004)	5.0	5.0	N.C.
Barium (D005)	100	7.6	
Cadmium (D006)	1.0	.19	
Chromium (Total) (D007)	5.0	.86	
Lead (D008)	5.0	.37	
Mercury-retort residues (D009)	0.20	.20	N.C.
Mercury—all others (D009)	.20	.025	
Selenium (D010)	1.0	.16	
Silver (D011)	5.0	.30	

PROPOSED CHANGES FOR TC METALS (WASTEWATERS) (D004–D011)

TC metal	Old TC level (mg/l TCLP)	New UTS level (mg/l)	N.C.=no change
Arsenic (D004)	5.0	1.4	
Barium (D005)	100	1.2	
Cadmium (D006)	1.0	.69	
Chromium (Total) (D007)	5.0	2.77	
Lead (D008)	5.0	.69	
Mercury-retort residues (D009)	.20	NA	
Mercury—all others (D009)	.20	.15	
Selenium (D010)	1.0	.82	
Silver (D011)	5.0	.43	

VI. Mineral Processing Waste Issues

EPA is planning revisions to the regulations pertaining to mineral processing wastes, including the definition of solid waste, the rules applying to mixtures of Bevill-exempt wastes and those which are not Bevill-exempt, application of land disposal to characteristic mineral processing wastes, and responses to various court remands. The Agency plans to address these issues in a supplemental proposal to today's rule.

VII. Environmental Justice

A. Applicability of Executive Order 12898

EPA is committed to address environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. In response to the Executive Order and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

B. Potential Effects

Today's proposed rule covers several wastes: wood preserving wastes, TC metals, and leaks/sludges/and emissions from surface impoundments. The rule involves not one site, but will possibly affect many facilities nationwide. Because of the locations of some of these facilities and surface impoundments, the potential exists for impacts to minority or low income communities.

Today's rule is intended to reduce risks of hazardous and characteristic wastes as proposed, and to benefit all populations. As such, this rule is not expected to cause any disproportionate impacts to minority or low income communities versus affluent or non-minority communities.

The Agency is soliciting comment and input from all stakeholders, including members of the environmental justice community and members of the regulated community. The Agency encourages all interested parties to provide comments or further information that might be necessary on the data, analysis, and findings contained in this section. The Agency is interested in receiving additional information and/or comment on the following:

- Information on facilities with surface impoundments that have evaluated potential ecological, human health (taking into account subsistence patterns and sensitive populations) and socioeconomic impacts to minority or low-income communities.
- Information on facilities with surface impoundments that have conducted human health analyses identifying multiple and cumulative exposures (populations at risk) from leaks, emissions, sludges.
- Information on releases (leaks, emissions) that have occurred in the community and their health and environmental effects; and possible effects of exposure to the chemicals in the community.
- Information on hazardous materials stored, used, and transported in the community.

VIII. 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 the capacity analyses for each group

of wastes covered in this rule, see ''Background Document for Capacity Analysis for Land Disposal Restrictions, Phase IV—Issues Associated with Clean Water Act Treatment Equivalency, and Treatment Standards for Wood Preserving Wastes and Toxicity Characteristic Metal Wastes.

In general, EPA's capacity analysis focuses 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 Publicly Owned Treatment Works (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 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.[4]

B. Capacity Analysis Results Summary

1. Available Capacity

EPA estimates that there are 115,900 tons per year of commercial sludge/solid combustion capacity and 1,145,000 tons per year of commercial liquid combustion capacity available to meet the treatment requirements of Phase IV wastes. EPA estimates that there are over one million tons of available stabilization capacity. In addition, EPA estimates that there are approximately 47 million tons per year of available wastewater treatment capacity.

[4] 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.

EPA believes that some facilities may face logistical problems in complying with the sludges, leaks, and air emissions standards. For example, if the standards require alternative management of characteristic wastes, modifications (e.g., waste segregation, plant replumbing, the installation of a new waste treatment system or pollution prevention mechanisms) might require significant time. If EPA determines that on-site treatment capacity will not be available when the final rule is promulgated, and that there would be no feasible way for generators to transport their wastes to commercial treatment facilities, EPA may grant a capacity variance for up to two years. EPA requests comments on the types of modifications that might be necessary at facilities that need to manage their Phase IV wastes on-site, and the time required to make such modifications.

2. Surface Impoundment Sludges, Leaks, and Air Emissions

EPA is considering several regulatory options for surface impoundment sludges, leaks, and air emissions. Details of the methodology and estimates of affected facilities and waste quantities are provided in the capacity analysis technical background document.

EPA estimates that for the regulatory option that relies on Phase III rulemaking and other EPA regulatory activities (e.g., CAA) to achieve RCRA-equivalent levels of control (Option 1), no facilities or quantities will be affected by the Phase IV rule.

The other regulatory options apply some additional controls beyond treatment standards for surface impoundment wastewaters regulated under the Phase III rule. EPA analyzed these other regulatory options by focusing on the 15 industry sectors identified in the Phase III LDR capacity analysis as the industries most likely to be affected by the Phase IV LDR rule.

EPA estimates that for Option 2, the wastewater affected by the air emissions standard for surface impoundments in CWA or CWA-equivalent treatment systems will be about 0.4 billion to 5.8 billion tons of decharacterized wastewater per year. About 0.3 billion to 3.7 billion tons of decharacterized wastewater could be affected by the leak standard. The facilities generating affected wastewater may need to conduct ground water monitoring, install liners, or conduct ground water remediation. EPA estimates that 0.1 million to 3.5 million tons per year of sludges might be affected by the sludges component of the Phase IV LDR rule. For Option 3, EPA estimates that 2.4 billion to 16 billion tons of decharacterized wastewater will be affected each year by the air emissions, leaks, and sludges standards.

For Options 2 and 3, EPA believes that some affected facilities need time to reconfigure their waste management systems or to build treatment capacity for these wastes, since the volumes of waste affected are large enough to make off-site treatment impractical for many facilities. EPA is proposing to grant a two-year national capacity variance for surface impoundment sludges, leaks, and air emissions under the regulatory options that require additional management of these wastes beyond the Phase III standards (i.e., Options 2 and 3). EPA requests comments on this proposal and data on the number of affected facilities and the quantities of affected wastes.

3. Newly Identified Characteristic Metal Wastes

EPA estimates 41,250 tons per year of newly identified D008 (lead) nonwastewaters will require stabilization as a result of the TCLP test. EPA believes that any additional quantities of other newly identified TC metal wastes are very small. Since there are over 1 million tons of stabilization capacity available to treat these wastes, EPA is proposing to not grant a variance to TC metal wastes.

4. Wood Preserving Wastes

EPA estimates that very small quantities of wood preserving wastewaters (approximately 340 tons of organic wastewater and 40 tons of inorganic wastewater per year) will require alternative treatment capacity in order to comply with the proposed LDRs. EPA estimates that approximately 28,000 per year tons of nonwastewaters (24,860 tons of organic nonwastewaters and 2,880 tons of inorganic nonwastewaters) will require alternative treatment as a result of the proposed LDRs.

EPA believes that incineration should be able to meet the proposed treatment standards for organic wastewaters and nonwastewaters, stabilization should be able to meet the proposed treatment standards for inorganic nonwastewaters, and chemical precipitation should be able to meet the treatment standards for the inorganic wastewaters. There is sufficient liquid and sludge/solid combustion capacity for both the organic wood preserving wastewaters and nonwastewaters. In addition, EPA believes that there is sufficient chemical precipitation capacity for the inorganic wastewaters. Finally, there are over 1 million tons of stabilization capacity for the inorganic nonwastewaters.

Therefore EPA is proposing not to grant a variance for the newly listed wood preserving wastes. Although many commenters to the ANPRM (56 FR 55160) expressed concern that treatment facilities would not accept F032 waste if the treatment standards include a dioxin concentration, EPA believes that its Combustion Strategy will alleviate this problem.

Given the potentially large quantity of soil and debris contaminated with newly listed wood preserving wastes and the lack of adequate treatment capacity to meet this demand, EPA is proposing to grant a two-year capacity variance to soil and debris contaminated with newly listed wood preserving wastes. The Agency requests comments on this proposal, including data on the quantities of soil and debris contaminated with wood preserving wastes that are generated.

5. Mixed Radioactive Wastes

Despite the uncertainty about quantities of mixed radioactive wastes containing wastes that will require treatment as a result of today's proposed rule, any new commercial capacity that becomes available will be needed for mixed radioactive wastes that were regulated in previous LDR rulemakings and whose variances have already expired. Thus, EPA has determined that sufficient alternative treatment capacity is not available, and is proposing to grant a two-year national capacity variance for mixed RCRA/radioactive wastewaters and nonwastewaters contaminated with wastes whose standards are being proposed today.

6. Phase IV Wastes Injected Into Class I Wells

EPA estimates that approximately 11 million tons of newly identified and listed wastes are being injected in Class I injection wells. These injected volumes vary in amount by facility and are all disposed on site. None of these facilities transport their waste off site or currently have the necessary capacity to treat their waste on site by acceptable means. Additionally, for those facilities affected by the proposed prohibitions which are unable to make a successful no migration demonstration and/or are unable to meet the requirements of other proposed options, constructing a treatment facility on site would require a significant amount of time. Therefore the Agency is proposing to grant a two-year national capacity variance for these wastes.

EPA requests comments on the above capacity determinations. In particular, EPA requests data on the generation, characteristics, and management of the wastes discussed above. In addition, EPA requests data on the availability of treatment capacity for any of these wastes.

Table 1 lists each category of RCRA wastes for which EPA is today proposing LDR standards. For each category, this table indicates whether EPA is proposing to grant a national capacity variance for land-disposed wastes.[5]

TABLE 1.—VARIANCES FOR NEWLY LISTED AND IDENTIFIED WASTES

["Yes" indicates EPA is proposing to grant a variance] [1]

Waste description	Surface-disposed wastes	Deep well-injected wastes
Phase IV Sludges [2]	Yes	N/A.
Phase IV Leaks [2]	Yes	N/A.
Phase IV Air Emissions [2].	Yes	N/A.
Newly Identified TC Metals (D004–D011).	No	Yes.
Newly Listed Wood Preserving Wastes (F032, F034, F035).	No	Yes.
Soil and Debris Contaminated with Newly Listed Wood Preserving Wastes.	Yes	N/A.
Phase IV Mixed Radioactive Wastes.	Yes	Yes.

[1] Treatment capacity variances are for two years.

[2] The variance determinations listed here apply only to wastes derived from surface impoundments in CWA or CWA-equivalent systems that manage decharacterized ICRT wastes.

IX. 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 unauthorized 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.

Today's rule is being proposed pursuant to sections 3004(d) through (k), and 3004(m), of RCRA (42 U.S.C. 6924(d) through (k), and 6924(m)). The rule would be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. 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.

B. Abbreviated Authorization Procedures for Specified Portions of the Land Disposal Restrictions Phase II, III, and IV Rules

Under the current authorization structure, all revisions to authorized state hazardous waste programs, no matter how minor the change, are reviewed under the same procedures and standard of review. While these procedures may be appropriate for significant changes to the RCRA program, EPA believes they are too detailed for minor changes. EPA is aware that this situation may result in unnecessary costs and delays in authorizing States and add costs for the Agency to process these revisions. Because of these problems, EPA believes that the procedures for authorization should reflect the different scope of new rules. For example, a State should be able to gain authorization for minor revisions to a basic aspect of the program (i.e., the Land Disposal Restrictions) in an expedited fashion if that State is authorized for that major part of the program. Therefore, EPA is today proposing to create an expedited authorization procedure that would be applied to certain minor revisions to the

[5] 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.

LDR program in the Phase II, III, and IV rules.

Under this proposed approach, EPA's review and approval of a State's authorization application would be expedited. A State would be required to certify that provisions it has adopted provide authority that is equivalent and no less stringent than the Federal provisions. Within 60 days of receiving a complete application, EPA would provide notice to the public approving a complete State application. Then, the public would have an opportunity for comment, as provided by the existing regulations governing authorization revisions. A detailed explanation of today's proposed procedures is provided below.

Today's Phase IV proposal contains two very distinct types of changes to the Land Disposal Restrictions program. The abbreviated authorization process that EPA is proposing today would apply to minor changes to the existing program. Specifically, the new process would apply to the regulation of newly identified wastes under BDAT, and to several clarifications and improvements to the existing LDR program. These provisions involve minor and routine changes to the Land Disposal Restrictions (LDR) regulations. The other part of today's Phase IV proposal would potentially expand the scope of EPA's program under RCRA in significant ways. Specifically, EPA is proposing options that would address the management of decharacterized wastes in surface impoundments that are not subject to RCRA Subtitle C. Depending on the option that the Agency chooses, the universe of facilities covered by Subtitle C could significantly increase. The regulatory approach that EPA may use for these surface impoundments may also differ from previous regulatory schemes. EPA would use the existing authorization procedures for this part of the Phase IV proposal, except for option one in the management of decharacterized wastes. This option would use existing non-RCRA regulatory authorities to address these units, and therefore RCRA regulatory amendments would not be required. Thus, a State's authorization would not need to be revised.

EPA is also proposing to apply the same abbreviated authorization procedures to the more minor changes in the March 2, 1995, proposed Phase III LDR rule (see 60 FR 11702) that are similar to those in today's Phase IV proposal, as they also are routine changes to the LDR program. EPA also believes that the revised numerical values represented by the Universal Treatment Standards (UTS) in §§ 268.40 and 268.48 that were promulgated in the Phase II LDR rule (see 59 FR 47982, September 1, 1994) are changes appropriate for the abbreviated process.

Basis/Rationale for Streamlined Authorization

EPA believes that an abbreviated procedure can and should be used to authorize States for sections of the Phase II, III, and Phase IV LDR rules (discussed below) for several reasons. First, the applicable portions of these rules are relatively minor in nature. Over time, changes such as these have become a routine part of the LDR program. Second, the States that would use this procedure would already be authorized for the Third Third LDR rule. During the authorization process for the LDR rules up to and including the Third Third rule, EPA would have already determined whether the State has an LDR program that is consistent with the Federal program, and also whether there is adequate enforcement. Third, since the State has been implementing the LDR program, EPA will be familiar with the State's implementation performance. Last, EPA believes that implementation of the LDR program will be enhanced by expedited authorization of these provisions, since authorization will remove any confusion about who is the implementing Agency for specific requirements.

Section 3006(b) of RCRA establishes the legal standard for State program approval. EPA believes that for the routine changes in the Phase II, III, and IV LDR rules, the certification submitted to EPA by the State provides an adequate basis for EPA to propose approval of the program revision, as this certification simply updates EPA's previous findings regarding the LDR program. EPA also believes that by virtue of a State having obtained authorization for the LDR program, the State has demonstrated its capability both in the administration and implementation of the program, and in its understanding of the requisite legal requirements. States that are authorized for significant portions of the LDR program are familiar with the type of rule changes needed, have adopted all or most of the underlying LDR program, and have experience in implementing and enforcing the rules. Thus, EPA will give great weight to the statements and legal certification submitted by the State. Accordingly, the Agency believes that a second detailed evaluation by EPA is not warranted under such circumstances.

Proposed Streamlined Authorization Procedures

Today's notice proposes to amend 40 CFR Part 271 to create a streamlined authorization procedure in new section 271.28. EPA is proposing today to apply this procedure only to the specific parts of the Phase II, III, and IV rules that are identified in paragraph (a) of section 271.28. EPA is also soliciting comment, however, on whether this approach should be applied to other aspects of the land disposal program.

The parts of the Phase III proposal to which today's streamlined authorization proposal would be applicable are: (1) Treatment standards for newly listed wastes, (2) improvements to the existing land disposal restrictions program, (3) revisions and corrections to the treatment standards in §§ 268.40 and 268.48, and (4) the prohibition of hazardous waste as fill material. The preamble discussion for these parts of the Phase III proposal is in Sections VI, VII, and VIII of the March 2, 1995, notice (see 60 FR 11702). The applicable parts of today's proposed Phase IV rule are: (1) Treatment standards for newly listed and identified wastes and (2) improvements to the land disposal restrictions program. In the final Phase II rule, the applicable parts are the treatment standards in §§ 268.40 and 268.48.

Note that EPA is not proposing the use of this streamlined procedure for the authorization of those sections of the Phase III rule that address end-of-pipe treatment standards for (1) Clean Water Act and equivalent wastewater treatment systems, and (2) Class I non-hazardous injection wells. The streamlined procedures would also not be used for the authorization of the option the Agency chooses in the Phase IV final rule to address the management of leaks, sludges, and air emissions of toxic constituents from decharacterized wastes. As explained earlier, EPA has tentatively concluded that these requirements would involve significant expansions of the program deserving more detailed review.

Paragraph (a) of proposed § 271.28 also specifies that the State must already be authorized for the Third Third LDR rule (see 55 FR 22520, June 1, 1990) to be able to use the proposed streamlined procedure to gain authorization for the Phase II, III, and IV rules. EPA is proposing this approach because the structure of the LDR program is essentially complete with the Third Third rule, and few changes have been made since this rule, EPA believes that it is appropriate to require LDR program authorization up to and including this

rule as a condition for using the proposed streamlined procedures. As of May 31, 1995, 19 States have been authorized to implement the Third Third LDR rule. At the same time, EPA recognizes that this proposed approach may unnecessarily limit the benefits of streamlined authorization procedures. Therefore, EPA solicits comment on (1) whether the use of the streamlined procedure should be expanded to other Land Disposal Restrictions rules, and (2) whether a State should only be required to be authorized for the Solvents and Dioxins rule (51 FR 40572, November 7, 1986) to use this procedure, since this rule put in place the basic structure of the LDR program.

Under proposed section 271.28(b), a State would submit an abbreviated application (primarily consisting of a certification from the State) that the laws of the State provide authorities that are equivalent to, and no less stringent than the Federal authorities. The certification would also include appropriate citations to the specific statutes, administrative regulations and where appropriate, judicial decisions. The cited State statutes and regulations would also have to be fully effective at the time the certification is signed. As discussed above, in the case of routine or minor program changes, EPA believes that this certification will provide an adequate basis for EPA's authorization of a program revision under RCRA section 3006 (absent contrary information in the possession of EPA, or supplied in comments during the public comment period).

Under proposed section 271.28(c), within 30 days of receipt of the application EPA would be required to notify the State if EPA determines that the application, including the certification, is not complete. Accordingly, when the application is received, EPA would conduct a completeness check to determine whether the application contains all the required components. EPA will address the extent of this completeness check in future authorization guidance. However, EPA does not intend that this completeness check involve a detailed and substantive review. EPA specifically requests comment on what activities this check should be limited to. The reasons why EPA could determine that an application is not complete are specified in section 271.28(d). To minimize any errors such as these, EPA continues to encourage States to submit draft rules to EPA for review. If EPA does find that an application is incomplete or contains errors, EPA will summarize the deficiencies in the completeness notice sent to the State under § 271.28(c). After the deficiencies are corrected, the State would resubmit the application to EPA.

When EPA determines that a State's application is complete, EPA would issue an immediate final rule under section 271.28(e) within 60 days of receiving the application under paragraph (c). Thus, if a State's initial application is complete, this notice would be published no later than 30 days after EPA finishes its completeness check. This immediate final rule is similar to the notice used in § 271.21 for other revision authorization decisions. Thus, the public would have the same ability to comment as for other authorization decisions. The notice would provide for a 30-day public comment period, and would go into effect 60 days after publication unless a significant adverse comment is received by EPA. An example of a significant adverse comment would be that the State did not have the necessary authority to implement the new requirements.

EPA solicits comments on this proposed approach, as well as suggestions of possible modifications or alternative approaches. For example, is the step of a 30-day completeness review necessary? Are the criteria in § 271.28(d) for completeness appropriate? Are there further efficiencies that could be made, for example, in the approval process for program changes that are purely technical? Does the proposed process provide adequate assurance that the State program will be consistent with and no less stringent than the Federal program?

Although EPA has proposed to use this streamlined authorization procedure only for portions of the Phase II, III, and IV LDR rules, EPA is considering this procedure for other aspects of the Land Disposal Restrictions and other rules in the future. Future proposals will further discuss EPA's plans for improving and streamlining the state authorization program. EPA is planning to propose to use a similar authorization approach for the upcoming Hazardous Waste Identification Rule (HWIR) for contaminated media. This different procedure would provide for additional EPA review of the State's authorization application. EPA expects that the procedure proposed today would constitute the most expedited authorization procedure available to States.

C. Effect on State Authorization

Because today's proposed Phase IV LDR rule is being proposed under HSWA authority, when finalized, those sections of today's proposal that expand the coverage of the LDR program (e.g., to newly identified wastes) would be implemented by EPA in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. However, some of the regulatory amendments proposed today are less stringent than, or reduce the scope of, the existing Federal requirements. Others are neither more or less stringent.

States that are authorized for provisions that would be amended in a less stringent manner by today's proposal would not be required to modify their program to adopt the revised provisions. Those provisions are described in Section VI of today's preamble, entitled Improvements to Land Disposal Restrictions Program. The regulatory provisions that are considered to be less stringent are in sections: 268.4, 268.5, 268.7, 268.30–37, waste code F039 in the table titled ''Treatment Standards for Hazardous Wastes'' in § 268.40, and the use of polymerization as a treatment method for certain D001 wastes in Table 1 of § 268.42.

Other provisions are neither more or less stringent. EPA clarified in a December 19, 1994, memorandum (which is in the docket for today's proposal) that EPA would not implement the Universal Treatment Standards (promulgated under HSWA authority in the Phase II LDR rule) separately for those States for which the State has received LDR authorization. EPA views any changes from the existing limits to be neither more or less stringent since the technology basis of the standards has not changed. Accordingly, EPA will not implement the amendments to the UTS that are proposed in the LDR Phase III and IV proposals.

States should note that EPA is also proposing to include newly identified wastes under the LDR program. Because these more stringent HSWA provisions expand the scope of LDR coverage, EPA would generally implement them in authorized States on the effective date of today's rule. EPA's authorization guidance for the final rule will identify in more detail which provisions in these sections will be implemented. However, EPA strongly encourages States that are authorized for the Land Disposal Restrictions program to make these proposed improvements to their regulations because of the clarity they will give to the regulated community and to the Agency.

Because today's 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. It should be noted that all HSWA interim authorizations will expire January 1, 2003. (See § 271.24(c) and 57 FR 60132, December 18, 1992.)

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 most cases, EPA expects that it 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.

X. 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 considered compliance cost and economic impacts for ensuring adequate control of underlying hazardous constituents in air emissions, leaks, and sludges produced in surface impoundments used to treat decharacterized ICRT wastewaters. Also covered under this rule are three wood preserving wastes (F032, F034, and F035) and TC metals (D004–D011). The analysis considered compliance cost and economic impacts for both characteristic wastes and newly listed wastes affected by this rule. The Agency would like to have better information regarding how many facilities and waste management units are potentially affected, waste volumes, constituents, concentrations, how often and under what circumstances additional treatment is required, and treatment costs.

Detailed discussions 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 may be found in the background document, ''Regulatory Impact Analysis of the Proposed Phase IV Land Disposal Restrictions Rule,'' which is in the docket for today's proposed rule.

1. Methodology Section

Three regulatory options were considered to establish ''RCRA equivalency'' for decharacterized ICRT wastes. In other words, wastes decharacterized by dilution may be placed in a nonhazardous surface impoundment only if the toxic constituents are treated to the same extent that they would be under the treatment standards mandated by RCRA section 3004(m)(1). The analysis of these regulatory options involved characterizing the affected universe of facilities in terms of current management practices, waste volumes, and constituent concentrations in wastewater (i.e., characterizing baseline conditions).

Agency estimated the volumes of waste affected by today's rule to determine the national level incremental costs (for both the baseline and post-regulatory scenarios), economic impacts (defined as the difference between the industrial activity under post-regulatory conditions and the industrial activity in the absence of regulation), and benefits (including estimation of pollutant loadings reductions, estimation of reductions in exceedances of health-based levels, and qualitative description of the potential benefits.) The procedure for estimating the volumes of decharacterized ICRT wastes and newly listed wood preserving wastes affected by today's proposed rule is detailed in the background document ''Regulatory Impact Analysis of the Proposed Phase IV Land Disposal Restrictions Rule,'' which was placed in the docket for today's proposed rule.

2. Results

a. Volume results. The Agency has estimated the volumes of decharacterized ICRT wastes potentially affected by today's proposed rule in the background document ''Regulatory Impact Analysis of the Proposed Phase IV Land Disposal Restrictions Rule,'' which was placed in the docket for today's proposed rule.

The Agency requests comment on waste volumes affected by the proposed Phase IV LDR rule.

b. Cost results. The Agency has prepared a cost and impacts analysis for the options previously described in this preamble. Under Option 1, the Agency proposes to defer to existing regulations, and as a result, expects minimal impacts to occur. The Agency has estimated that roughly 300 facilities (with approximately 800 surface impoundments) under Option 2 and roughly 850 facilities (with approximately 2,000 surface impoundments) under Option 3 may manage decharacterized wastewaters containing constituents exceeding UTS.

The Agency estimates that total annual compliance costs for facilities under Option 2 range from $10 to $65 million. Total annual compliance costs for facilities under Option 3 are estimated to be in the range of $200 to $300 million. The Agency requests comment and data regarding how often additional treatment may be required.

The Agency has estimated that minimal impacts will occur as the result of setting treatment standards for TC metals.

c. Economic impact results. The Agency has estimated the economic impacts of today's proposed rule to be small. Results of the analysis were included in the docket for today's proposed rule. The Agency requests comment on anticipated economic impacts resulting from the proposed Phase IV LDR rule.

d. Benefit estimate results. The Agency has estimated the benefits associated with today's proposed rule to be small. Screening risk results for air emissions suggest that 20 to 25 percent of samples (306 to 349 of 1,562 facilities for which data are available) exceed the 100 parts per million by weight (ppmw) control limit set by the Subpart CC rule.

Central tendency screening risk results for leaks to groundwater indicate that samples from the pharmaceutical and OCPSF industries have potential individual lifetime cancer risk exceedances of 10^{-5} at the raw wastewater and biological pond influent sampling points. In the pharmaceutical industry, methylene chloride and acrylonitrile are the constituents of concern; in the OCPSF industries, acrylonitrile is the constituent of concern. Point of generation data indicate the potential for risks from leaks, however, surface impoundment data are not available for all industries.

Central tendency screening risk results for sludges from the OCPSF industry indicate that two samples present individual lifetime cancer risk in excess of 10^{-5}, where acrylonitrile is the constituent of concern. The Agency requests comment on anticipated benefits resulting from the proposed Phase IV LDR rule.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., when an agency publishes 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,* dated 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, EPA is not aware of any data on potentially affected small entities. Second, due to the statutory requirements of the RCRA LDR program, no legal avenues exist for the Agency to provide relief from the LDRs 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 kilograms (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 address the land disposal of the hazardous wastes covered in today's proposed rule without regard to the size of the entity being regulated.

C. Paperwork Reduction Act

The information collection requirements in today's 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. An Information Request (ICR) document was prepared by EPA and a copy may be obtained from Sandy Farmer (EPA ICR #1442.10), Environmental Protection Agency, Regulatory Information Division, 401 M. Street, S.W. (mail code 2136), Washington, D.C. 20460, or by calling (202) 260–2740. Only incremental burdens are discussed in the ICR. This burden will eventually be merged with the LDR program ICR.

The overall reporting and recordkeeping burden is estimated to be approximately 66,000 hours. The average recordkeeping burden per respondent is approximately 3 hours. The public reporting burden for this collection is estimated to average 16 hours per respondent. This includes time for reviewing instructions, gathering and compiling data, maintaining the data, and preparing and submitting data.

The public should send comments regarding the burden estimate, or any other aspect of this collection of information (please refer to EPA ICR# 1442.10 and OMB# 2050–0085) including suggestions for reducing burden to: Sandy Farmer (EPA ICR 1442.10), Environmental Protection Agency, Regulatory Information Division, 401 M. Street, S.W. (mail code 2136), Washington, D.C. 20460; and to Jonathan Gledhill (OMB 2050–0085), Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20460.

XI. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA has completed an analysis of the costs and benefits from the proposed Phase IV LDR rule and has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate. As stated above, the private sector may incur costs exceeding $100 million per year depending upon the option chosen in the final rulemaking. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act, and results of this analysis have been included in the background document ''Regulatory Impact Analysis of the Proposed Phase IV Land Disposal Restrictions Rule,'' which was placed in the docket for today's proposed rule.

List of Subjects

40 CFR Part 148

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

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: August 11, 1995. ‘

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations as proposed to be amended at 60 FR 11702 (March 2, 1995) is further 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: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.

2. Section 148.18 is amended by redesignating paragraphs (a), (b), and (c), as paragraphs (b), (c), and (d), and by adding paragraph (a) to read as follows:

§ 148.18 Waste specific prohibitions—Newly Listed and Identified Wastes.

(a) Effective August 22, 1997, the wastes specified in 40 CFR 261 as EPA Hazardous waste numbers F032, F034, and F035, D004—D011 (as measured by the Toxicity Characteristic Leaching Procedure), and mixed D004–D011 TC/radioactive wastes, are prohibited from underground injection.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

3. 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

4. Section 268.1 is amended by revising paragraph (e)(4)(ii) to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(e) * * *

(4) * * *

(ii) Characteristic wastes which are injected into Class I nonhazardous waste wells or placed in a Clean Water Act (CWA) or CWA-equivalent wastewater treatment surface impoundment, whose combined volume is less than one per cent of the total flow at the wellhead, or at the surface impoundment influent, on an annualized basis; and for 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.

* * * * *

5. Section 268.4 is amended by revising paragraphs (a)(2)(iv), and (a)(4) introductory text to read as follows:

* * * * *

§ 268.4 Treatment surface impoundment exemption.

(a) * * *

(2) * * *

(iv) *Recordkeeping:* Sampling and testing and recordkeeping provisions of §§ 264.13 and 265.13 of this chapter apply.

* * * * *

(4) The owner or operator submits to the Regional Administrator a written certification that the requirements of § 268.4(a)(3) have been met. The following certification is required:

* * * * *

6. Section 268.5 is amended by revising paragraph (e) to read as follows:

§ 268.5 Procedures for case-by-case extensions to an effective date.

* * * * *

(e) On the basis of the information referred to in paragraph (a) of this section, after notice and opportunity for comment, and after consultation with appropriate State agencies in all affected States, the Administrator may grant an extension of up to one year from the effective date. The Administrator may grant additional time, up to one additional year, if requested in the application for the original extension of the effective date, or if requested at a later date, so long as the demonstration can be made that additional time beyond one year is necessary. In no event will an extension extend beyond 24 months from the applicable effective date specified in Subpart C of Part 268. The length of any extension authorized will be determined by the Administrator based on the time required to construct or obtain the type of capacity needed by the applicant as described in the completion schedule discussed in paragraph (a)(5) of this section. The Administrator will give public notice of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision will be published in the **Federal Register**.

* * * * *

7. Section 268.7 is amended by removing paragraph (b)(2) and redesignating paragraph (b)(3) as (b)(2), (b)(4) as (b)(3), (b)(5) as (b)(4), (b)(6) as (b)(5) and (b)(7) as (b)(6; by revising the heading, paragraph (a), the introductory text of paragraph (b), (b)(1), (b)(2), (b)(3), (b)(4) introductory text, (b)(4)(i) introductory text, (b)(4)(ii) introductory text, (b)(4)(iii) introductory text, (c)(1), and (c)(2) to read as follows:

§ 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.

(a) Requirements for generators:

(1) Determine if the waste has to be treated before being land disposed, as follows: A generator of a hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40 or § 268.45. This determination can be made in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in ‘‘Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,’’ EPA Publication SW–846, as referenced in § 260.11 of this chapter, depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste’s extract. In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed. These treatment standards are also found in § 268.40, and are described in detail in § 268.42, Table 1. These wastes do not need to be tested. If a generator determines they are managing a waste that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of § 268.9 of this part in addition to any applicable requirements in this section.

(2) If the waste does not meet the treatment standard: With each shipment of waste, the generator must notify the treatment or storage facility in writing. The notice must include the information in column ‘‘268.7(a)(2)’’ of the Notification Requirements Table in § 268.7(a)(4).

(3) If the waste meets the treatment standard: The generator must send a one-time notice and certification to each treatment or storage facility receiving the waste. The notice must state that the

waste meets the applicable treatment standards set forth in § 268.40 or § 268.45. The notice must also include the information indicated in column ''268.7(a)(3)'' of the Notification Requirements Table in § 268.7(a)(4). However, generators of hazardous debris excluded from the definition of hazardous waste under § 261.3(e)(2) of this chapter are not subject to these requirements. If the waste changes, the generator must send a new notice and certification to the receiving facility, and place a copy in their files.

(4) For reporting, tracking and recordkeeping when exceptions allow certain wastes that do not meet the treatment standards to be land disposed: There are certain exemptions from the requirement that hazardous wastes meet treatment standards before they can be land disposed. These include, but are not limited to case-by-case extensions under § 268.5, disposal in a no-migration unit under § 268.6, or a national capacity variance under subpart C of this part. If a generator's waste is so exempt, then the generator must submit a one-time notice and certification to each land disposal facility receiving the waste. The notice must include the information marked off in column ''268.7(a)(4)'' of the Notification Requirements Table below. If the waste changes, the generator must send a new notice and certification to the receiving facility, and place a copy in their files.

PAPERWORK REQUIREMENTS TABLE

Required Information	§ 268.7(a)(2)	§ 268.7(a)(3)	§ 268.7(a)(4)
1. EPA Hazardous Waste and Manifest Numbers	√	√	√
2. The constituents for F001–F005, F039, and underlying hazardous constituents, unless the waste will be treated and monitored for all constituents (in which case none are required to be listed). The notice must include the applicable wastewater/ nonwastewater category (see §§ 268.2(d) and (f)) and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanide)	√		
3. Waste analysis data (when available)	√		
4. Date the waste is subject to the prohibition			√
5. Certification statement: I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards, or is subject to an exmeption from the treatment standards, specified in 40 CFR part 268 subpart D. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment		√	√
6. For hazardous debris, when treating with the alternative treatment technologies provided by § 268.45: the contaminants subject to treatment, as described in § 268.45(b); and an indication that these contaminants are being treated to comply with § 268.45	√		

(5) If a generator is managing prohibited waste in tanks, containers, or containment buildings regulated under 40 CFR 262.34, and is treating such waste in such tanks, containers, or containment buildings to meet applicable treatment standards under subpart D of this part, the generator must develop and follow a written waste analysis plan which describes the procedures the generator will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of Table 1, § 268.45, however, are not subject to these waste analysis requirements.) The plan must be kept on site in the generator's records, and the following requirements must be met:

(i) The waste analysis plan must be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste(s) being treated, and contain all information necessary to treat the waste(s) in accordance with the requirements of this Part, including the selected testing frequency.

(ii) Such plan must be kept in the facility's on-site files and made available to inspectors.

(iii) Wastes shipped off-site pursuant to this paragraph must comply with the notification requirements of § 268.7(a)(4).

(6) If a generator determines that the waste is restricted based solely on his knowledge of the waste, all supporting data used to make this determination must be retained on-site in the generator's files. If a generator determines that the waste is restricted based on testing this waste or an extract developed using the test method 1311 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, as referenced in § 260.11 of this chapter, and all waste analysis data must be retained on-site in the generator's files.

(7) If a generator determines that he is managing a restricted waste that is excluded from the definition of hazardous or solid waste or exempt from Subtitle C regulation, under 40 CFR 261.2 through 261.6 subsequent to the point of generation, he must place a one-time notice stating such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from RCRA Subtitle C regulation, and the disposition of the waste, in the facility's file.

(8) Generators must retain on-site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this section for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The three year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. The requirements of this paragraph apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under 40 CFR 261.2–261.6, or exempted from Subtitle C regulation, subsequent to the point of generation.

(9) If a generator is managing a lab pack waste and wishes to use the alternative treatment standard for lab packs found at § 268.42(c), with each shipment of waste the generator must submit a notice to the treatment facility in accordance with paragraph (a)(2) of this section. If the lab pack contains characteristic hazardous wastes (D001–D043), underlying hazardous constituents (as defined in § 268.2(i)) need not be determined. The generator must also comply with the requirements in paragraphs (a)(6) and (a)(7) of this section and must submit the following certification, which must be signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only wastes that have not been excluded under appendix IV to 40 CFR part 268. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(10) Small quantity generators with tolling agreements pursuant to 40 CFR 262.20(e) must comply with the applicable notification and certification requirements of paragraph (a) of this section for the initial shipment of the waste subject to the agreement. Such generators must retain on-site a copy of the notification and certification, together with the tolling agreement, for at least three years after termination or expiration of the agreement. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(b) Treatment facilities must test their wastes according to the frequency specified in their waste analysis plans as required by 40 CFR 264.13 (for permitted TSDs) or 40 CFR 265.13 (for interim status facilities). Such testing must be performed as provided in paragraphs (b)(1), (b)(2) and (b)(3) of this section.

(1) For wastes with treatment standards expressed as concentrations in the waste extract (TCLP) the owner or operator of the treatment facility must test the treatment residues, or an extract of such residues developed using test method 1311 (the Toxicity Characteristic Leaching Procedure, described in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846 as incorporated by reference in § 260.11 of this chapter), to assure that the treatment residues or extract meet the applicable treatment standards.

(2) For wastes with treatment standards expressed as concentrations in the waste, the owner or operator of the treatment facility must test the treatment residues (not an extract of such residues) to assure that the treatment residues meet the applicable treatment standards.

(3) A notice must be sent with each waste shipment to the land disposal facility except that debris excluded from the definition of hazardous waste under § 261.3(e) of this chapter (i.e., debris treated by an extraction or destruction technology provided by Table 1, § 268.45, and debris that the Director has determined does not contain hazardous waste) is subject to the notification and certification requirements of paragraph (d) of this section rather than these notification requirements. The notice must include the information in the Notification Requirements Table in this section.

PAPERWORK REQUIREMENTS TABLE

Required information	§ 268.7(b)
1. EPA Hazardous Waste and Manifest numbers	√
2. The constituents for F001–F005, F039, and underlying hazardous constituents, unless the waste will be treated and monitored for all constituents (in which case none are required to be listed). The notice must include the applicable wastewater/nonwastewater category (see §§ 268.2 (d) and (f)) and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanide)	√
3. Waste analysis data (when available)	√

(4) The treatment facility must submit a certification with each shipment of waste or treatment residue of a restricted waste to the land disposal facility stating that the waste or treatment residue has been treated in compliance with the applicable performance standards specified in subpart D of this part. Debris excluded from the definition of hazardous waste under § 261.3(e) of this chapter (i.e., debris treated by an extraction or destruction technology provided by Table 1, § 268.45, and debris that the Director has determined does not contain hazardous waste), however, is subject to the notification and certification requirements of paragraph (d) of this section rather than the certification requirements of this paragraph.

(i) For wastes with treatment standards expressed as concentrations in the waste extract or in the waste under § 268.40 of this part, the certification must be signed by an authorized representative and must state the following:

* * * * *

(ii) For wastes with treatment standards expressed as technologies in § 268.40 (described in § 268.42) of this part, the certification must be signed by an authorized representative and must state the following:

* * * * *

(iii) For wastes with treatment standards expressed as concentrations in the waste pursuant to § 268.40, if compliance with the treatment standards in subpart D of this part is based in part or in whole on the analytical detection limit alternative specified in § 268.43(c), the certification also must state the following:

* * * * *

(c) * * *

(1) Have copies of the notice and certifications specified in paragraph (a) of this section.

(2) Test the waste, or an extract of the waste or treatment residue developed using test method 1311 (the Toxicity Characteristic Leaching Procedure), described in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846 as incorporated by reference in § 260.11 of this chapter), to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in subpart D of this part. Such testing must be performed according to the frequency specified in the facility's waste analysis plan as required by § 264.13 or § 265.13 of this chapter.

* * * * *

8. Section 268.9 is amended by revising paragraph (a), and paragraph (d)(1)(ii) 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 listed waste under 40 CFR part 261, subpart D. In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes under 40 CFR part 261, subpart C, except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section. If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, or POLYM of § 268.42, Table 1), the generator must determine the underlying hazardous constituents (as defined in § 268.2), in the characteristic wastes.

* * * * *

(d) * * *

(1) * * *

(ii) A description of the waste as initially generated, including the applicable EPA hazardous waste code(s), treatability group(s), and underlying hazardous constituents (as defined in § 268.2(i)), unless the waste will be monitored for all underlying hazardous constituents, in which case no constituents need be specified on the notification.

* * * * *

Subpart C—Prohibitions on Land Disposal

§§ 268.31, 268.32, 268.33, 268.34, 268.35 and 268.36 [Removed and Revised]

9. In Subpart C, §§ 268.31, 268.32, 268.33, 268.34, 268.35, and 268.36 are removed and reserved, and § 268.30 is revised to read as follows:

§ 268.30 Waste specific prohibitions—wood preserving wastes, and characteristic wastes that fail the toxicity characteristic.

(a) Effective November 20, 1995, the wastes specified in 40 CFR 261 as EPA Hazardous Waste numbers D004–D011 (as measured by the Toxicity Characteristic Leaching Procedure), F032, F034, and F035, are prohibited from land disposal.

(b) Effective August 22, 1997, soil and debris contaminated with F032, F034, F035; and radioactive wastes mixed with EPA Hazardous waste numbers D004–D011 (as measured by the Toxicity Characteristic Leaching Procedure) are prohibited from land disposal.

(c) Between November 20, 1995 and August 22, 1997, hazardous wastes F032, F034, F035; radioactive wastes mixed with EPA Hazardous waste numbers F032, F034, F035, and soil and debris contaminated with these wastes, 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) of this Part.

(d) The requirements of paragraphs (a), and (b) 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; or

(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 (including underlying hazardous constituents in characteristic wastes that have been diluted to remove the characteristic) in excess of the applicable Universal Treatment Standard levels of § 268.48 of this Part, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

Subpart D—Treatment Standards

10. Section 268.40 is amended by revising paragraph (e), and in the Table of Treatment Standards adding in alpha-numerical order entries for F032, F033, and F034, and revising the entries for D001 High TOC Subcategory, D003 Explosives, D004 through D011, and F039 to read as follows:

§ 268.40 Applicability of Treatment Standards.

* * * * *

(e) For characteristic wastes subject to treatment standards in the following table ''Treatment Standards for Hazardous Wastes,'' all underlying hazardous constituents (as defined in § 268.2(i)) must meet Universal Treatment Standards, found in § 268.48, Table UTS, prior to land disposal.

* * * * *

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	* * * * * *				
	High TOC Ignitable Subcategory based on 40 CFR 261.2(a)(1)—Greater than or equal to 10% total organic carbon (Note: this subcategory consists of nonwastewaters only)	NA	NA	NA	RORGS; or CMBST; or POLYM.
*	* * * * *				
D003	* * * * * *				

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
	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.
*	* * *	* *		*	*
D004	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for arsenic	Arsenic	7440–38–2	1.4	5.0 mg/l TCLP.
D005	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for barium	Barium	7440–39–3	1.2	7.6 mg/l TCLP.
D006	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for cadmium	Cadmium	7440–43–9	0.69	0.19 mg/l TCLP.
*	* * *	* *		*	*
D007	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for chromium	Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
D008	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for lead	Lead	7439–92–1	0.69	0.37 mg/l TCLP.
*	* * *	* *		*	*
D009	* * * * * *				
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury; 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	0.15	
*	* * *	* *		*	*
D010	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for selenium	Selenium	7782–49–2	0.82	0.16 mg/l TCLP.
D011	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for silver	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
*	* *	* *		*	*
F032	Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the FO32 waste code deleted in accordance with section 40 CFR 261.35 and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol	Pentachlorodibenzofurans ..	NA	0.000063	0.001
		Tetrachlorodibenzofurans ...	NA	0.000063	0.001
		Arsenic	7440–38–2	1.4	5.0 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
F034	Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K00l bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol	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
		2,4–Dimethylphenol	105–67–9	0.036	14
		Fluorene	86–73–7	0.059	3.4
		Hexachlorodibenzofurans ...	NA	0.000063	0.001
		Hexachlorodibenzo-p-dioxins.	NA	0.000063	0.001
		Naphthalene	91–20–3	0.059	5.6
		Pentachlorodibenzo-p-dioxins.	NA	0.000063	0.001
		Pentachlorophenol	87–86–5	0.089	7.4
		Phenanthrene	85–01–8	0.059	5.6
		Phenol	108–95–2	0.039	6.2
		Pyrene	129–00–0	0.067	8.2
		Tetrachlorodibenzo-p-dioxins.	NA	0.000063	0.001
		2,3,4,6–Tetrachlorophenol .	58–90–2	0.030	7.4
		2,4,6–Trichlorophenol	88–06–2	0.035	7.4
		Arsenic	7440–38–2	1.4	5.0 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP.
F035	Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K00l bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol	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
		2,4–Dimethylphenol	105–67–9	0.036	14
		Fluorene	86–73–7	0.059	3.4
		Naphthalene	91–20–3	0.059	5.6
		Pentachlorophenol	87–86–5	0.089	7.4
		Phenanthrene	85–01–8	0.059	5.6
		Phenol	108–95–2	0.039	6.2
		Pyrene	129–00–0	0.067	8.2
		2,3,4,6–Tetrachlorophenol .	58–90–2	0.030	7.4
		2,4,6–Trichlorophenol	88–06–2	0.035	7.4
		Arsenic	7440–38–2	1.4	5.0 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.86 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
*	* * *	*	*	*	*
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)	Universal Treatment Standards in § 268.48 apply, with the exceptions of flouride, vanadium, and zinc	NA	Universal Treatment Standards in § 268.48 apply, with the exceptions of vanadium and zinc	Universal Treatment Standards in § 268.48 apply, with the exceptions of vanadium and zinc.
*	* * *	*	*	*	*

* * * * * *

11. Section 268.42(a)(3) is amended by adding ''POLYM'' in alphabetical order to Table 1 to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

* * * * *

(a) * * *

(3) * * *

TABLE 1.—TECHNOLOGY CODES AND DESCRIPTION OF TECHNOLOGY-BASED STANDARDS

Technology code	Description of technology-based standards
*	* * * * * * *
POLYM	Formation of complex high-molecular weight solids through polymerization of monomers in high-TOC D001 nonwastewaters.
*	* * * * * * *

* * * * *

12. Section 268.44 is amended by revising the introductory text of paragraph (o), the title of the table, and the ''see also'' column of the table to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(o) The following facilities are excluded from the treatment standards under § 268.40 and are subject to the following constituent concentrations:

TABLE 2.—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentrations (mg/l)	Notes	Concentrations (mg/kg)	Notes
* * *	* * *	§ 268.40	*	*	*	* *	*
* * *	* * *	§ 268.40	*	*	*	* *	*

* * * * *

Appendix I, Appendix II, Appendix III, Appendix VII, Appendix VIII, Appendix IX and Appendix X to Part 268 [Removed and Reserved]

13. Appendix I, Appendix II, Appendix III, Appendix VII, Appendix VIII, Appendix IX, and Appendix X to Part 268 are removed and reserved, and Appendix VI to Part 268 is amended by revising the introductory text to read as follows:

Appendix VI to Part 268—Recommended Technologies to Achieve Deactivation of Characteristics in Section 268.40

The treatment standard for many subcategories of D001, D002, and D003 wastes as well as for K044, K045, and K047 wastes is listed in § 268.40 as ''Deactivation and meet UTS.'' EPA has determined that many technologies, when used alone or in combination, can achieve the deactivation portion of the treatment standard. Characteristic wastes that also contain underlying hazardous constituents (see § 268.2) must be treated not only by a ''deactivating'' technology to remove the characteristic, but also to achieve the universal treatment standards (UTS) for underlying hazardous constituents. The following appendix presents a partial list of technologies, utilizing the five letter technology codes established in 40 CFR 268.42 Table I, that may be useful in meeting the treatment standard. Use of these specific technologies is not mandatory and does not preclude direct reuse, recovery, and/or the use of other pretreatment technologies, provided deactivation is achieved and, if applicable, underlying hazardous constituents are treated to achieve the UTS.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

14. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

Subpart A—Requirements for Final Authorization

15. 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**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of Regulation	Federal Register reference	Effective date
* *	* *	* *	* *
[Insert date of publication of final rule in the Federal Register (FR)].	Land Disposal Restrictions Phase IV.	[Insert FR page numbers].	[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] 59 FR [Insert 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.	3004(m)	Do.
	.....	3004(g)(4)(C) and 3004(m).	Do.
* *	* * *	*	*

* * * * *

16. Section 271.28 is added to read as follows:

§ 271.28 Streamlined authorization procedures.

(a) The procedures contained in this section may be used by a State when revising its program by applying for authorization for the following rules, or parts of rules:

(1) The following changes promulgated by the Land Disposal Restrictions Phase Two rule (59 FR 47980, September 19, 1994) if a State is authorized for Land Disposal Restrictions rules up to the Third Third (55 FR 22520, June 1, 1990):

(i) New Table in § 268.40; and

(ii) New § 268.48.

(2) The following changes proposed by the Land Disposal Restrictions Phase Three rule (proposed at 60 FR 11702, May 2, 1995) if a State is authorized for Land Disposal Restrictions rules up to the Third Third (55 FR 22520, June 1, 1990):

(i) Amendments to §§ 266.20(b), 268.2, 268.7, 268.39, the Table to 268.40, 268.48; and

(ii) Removal of §§ 268.8, 268.10–12.

(3) All provided regulatory provisions of the proposed Land Disposal Restrictions Phase Four rule ([insert date of publication of final rule] FR

[Insert FR page number]), except amended § 268.1, if a State is authorized for Land Disposal Restrictions rules up to the Third Third (55 FR 22520, June 1, 1990).

(b) An application for a revision of a State's program for the provisions stated in paragraph (a) of this section shall consist of:

(1) A certification from the State that its laws provide authority that is equivalent to and no less stringent than the provisions specified in paragraph (a), and which includes references to the specific statutes, administrative regulations and where appropriate, judicial decisions. State statutes and regulations cited in the State certification shall be fully effective at the time the certification is signed; and

(2) Copies of all applicable State statutes and regulations.

(c) Within 30 days of receipt by EPA of a State's application for final authorization to implement a rule specified in paragraph (a) of this section, if the Administrator determines that the application is not complete, the Administrator shall notify the State that the application is incomplete. This notice shall include a concise statement of the deficiencies which form the basis for this determination.

(d) For purposes of this section an incomplete application is one where:

(1) Copies of applicable statutes or regulations were not included;

(2) The statutes or regulations relied on by the State to implement the program revisions are not yet in effect;

(3) The State is not authorized to implement the prerequisite RCRA rules as specified in paragraph (a) of this section; or

(4) In the certification, the citations to the specific statutes, administrative regulations and where appropriate, judicial decisions are not included or incomplete.

(e) Within 60 days after receipt of a complete final application from a State for final authorization to implement a rule or rules specified in paragraph (a) of this section, absent information in the possession of EPA, the Administrator shall publish an immediate final notice of the decision to grant final authorization as follows:

(1) In the **Federal Register**;

(2) In enough of the largest newspapers in the State to attract Statewide attention; and

(3) By mailing to persons on the State agency mailing list and to any other persons whom the Agency has reason to believe are interested.

(f) The public notice under paragraph (e) of this section shall summarize the State program revision and provide for an opportunity to comment for a period of 30 days.

(g) Approval of State program revisions under this section shall become effective 60 days after the date of publication in the **Federal Register** in accordance with paragraph (e) of this section, unless a significant adverse comment pertaining to the State program revision discussed in the notice is received by the end of the comment period. If a significant adverse comment is received, the Administrator shall so notify the State and shall, within 60 days after the date of publication, publish in the **Federal Register** either:

(1) A withdrawal of the immediate final decision; or

(2) A notice containing a response to comments and either affirming that the immediate final decision takes effect or reversing the decision.

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Federal Register

Tuesday
August 22, 1995

Part III

The President

Proclamation 6817—Death of Those in the U.S. Delegation in Bosnia-Herzegovina

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6817 of August 19, 1995

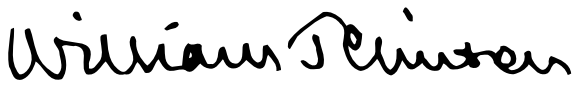
Death of Those in the U.S. Delegation in Bosnia-Herzegovina

By the President of the United States of America

A Proclamation

As a mark of respect for those who died as a result of the tragic accident near Sarajevo, Bosnia-Herzegovina, which occurred August 19, 1995, I hereby order, by the authority vested in me as President of the United States of America by section 175 of title 36 of the United States Code, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, Wednesday, August 23, 1995. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of August, 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 twentieth.



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