

Federal Register

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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** Sponsored by the Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Two Sessions]

- WHEN:** January 9, 1996 at 9:00 am and
January 23, 1996 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

LONG BEACH, CA

- WHEN:** December 12, 1995 at 9:00 am
- WHERE:** Glenn M. Anderson Federal Building, Conference Room—Room 3470, 501 West Ocean Boulevard, Long Beach, CA 90802
- RESERVATIONS:** 310-980-3447

SEATTLE, WA

[Two Sessions]

- WHEN:** December 13, 1995 at 9:00 am and 1:00 pm
- WHERE:** National Archives—Pacific Northwest Region, Conference Room, 6125 Sand Point Way, NE., Seattle, WA 98115
- RESERVATIONS:** 206-526-6507



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Reader Aids

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New Feature in the Reader Aids!

Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.

The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.

The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

Electronic Bulletin Board

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

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Rules and Regulations

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

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

OFFICE OF GOVERNMENT ETHICS

5 CFR Chapter XVI

RIN 3209-AA15

Concurrence by the Office of Government Ethics in the Issuance of Final Supplemental Standards of Ethical Conduct for Employees of the Farm Credit Administration

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; concurrence.

SUMMARY: The Office of Government Ethics is concurring in the issuance by the Farm Credit Administration (FCA) of final supplemental standards of ethical conduct for FCA employees.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of Government Ethics, telephone: 202-523-5757, FAX: 202-523-6325.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration recently adopted as final, without change, interim rule supplemental standards of ethical conduct for FCA employees, for codification at chapter XXXI, consisting of part 4101, and a residual cross-reference provision in its old standards regulation at 12 CFR part 601. See FR Doc. 95-22610 at 60 FR 47453 (September 13, 1995); see also the prior interim rule, on which OGE concurred and co-signed, at 60 FR 30778-30783 (June 12, 1995). In accordance with its authority under Executive Order 12674, as modified by E.O. 12731, and the Ethics in Government Act, the Office of Government Ethics is concurring in the issuance by the FCA of the final rule supplemental ethical conduct standards for FCA employees which augment the Standards of Ethical Conduct for Employees of the Executive Branch, as issued by OGE and codified at 5 CFR part 2635.

List of Subjects in 5 CFR Part 4101

Conflict of interests, Government employees.

Dated: November 1, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth above, the Office of Government Ethics is concurring in the final rule issuance by the Farm Credit Administration of 5 CFR part 4101.

[FR Doc. 95-29519 Filed 12-5-95; 8:45 am]

BILLING CODE 6345-01-U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 94-065-2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are revising the regulations for the importation of fruits and vegetables to update provisions for inspections and other activities at the port of first arrival. We are clarifying the procedures by which we give notice to an importer that cleaning, disinfection, disposal, or some other action is required for a shipment of fruits and vegetables. We are also clarifying the responsibility of the owner of imported fruits or vegetables for carrying out actions ordered by an inspector in accordance with the regulations. This action provides clearer standards for persons who must comply with the regulations and aids our enforcement of the regulations.

EFFECTIVE DATE: January 5, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Levy or Mr. Frank E. Cooper, Senior Operations Officers, Port Operations, PPQ, APHIS, Suite 4A03, 4700 River Road Unit 139, Riverdale, MD 20737-1236; (301) 734-8645.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56-8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into

the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

Section 319.56-6 of the regulations addresses requirements for the inspection and disinfection of imported fruits and vegetables at the port of first arrival. This section provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be subject to inspection, disinfection, or both, at the port of first arrival, as may be required by a U.S. Department of Agriculture inspector. The purpose of the inspection or disinfection is to detect and eliminate plant pests. This section also provides that any shipment of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other dangerous plant pests and an inspector determines that it cannot be cleaned by disinfection or treatment, or if the shipment contains leaves, twigs, or other portions of plants.

Section 319.56-6 also prohibits the movement of imported fruits and vegetables from the port of first arrival until the inspector gives notice to the collector of customs that the products have been inspected and found to be free from infestation and from plants or portions of plants used as packing or otherwise. This section also states that the importer is responsible for all charges for storage, cartage, and labor incident to inspection and disinfection, other than the services of the inspector.

On July 12, 1995, we published in the Federal Register (60 FR 35871-35873, Docket No. 94-065-1) a proposal to amend the regulations by revising § 319.56-6 to update provisions for inspections and other activities at the port of first arrival; to clarify the procedures by which we give notice to an importer that cleaning, disinfection, disposal, or some other action is required for a shipment of fruits or vegetables; and to clarify the responsibility of the owner of imported fruits or vegetables for carrying out actions ordered by an inspector in accordance with the regulations. We proposed these clarifications because the regulations are unclear on some points, and we have experienced difficulties enforcing some of the requirements because the regulations do not specify who is responsible for all of

the activities and costs that may be required to clear a shipment for entry into the United States. In this proposal, we also proposed to correct 7 CFR 319.37-6(e) by removing Mexico from the list of countries with restricted importation of citrus seed due to citrus canker.

We solicited comments concerning our proposal for 60 days ending September 11, 1995. We received one comment by that date. It was from a State agency and supported the proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule clarifies procedures for the inspection and release of imported fruits and vegetables at the port of first arrival in the United States. This revision of the regulations updates the regulatory language to conform to procedures currently in use at ports. These changes provide a clearer standard for importers of fruits and vegetables who must comply with the regulations, and will enhance enforcement of the regulations. The changes do not add any significant new costs for importers of fruits and vegetables or other persons. Importers are already responsible for all costs of treatment, movement, storage, or destruction ordered by an inspector at a port.

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

Executive Order 12372

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

Executive Order 12778

This rule clarifies the requirements at the port of first arrival for fruits and vegetables imported into the United States. State and local laws and regulations regarding the importation of fruits and vegetables under this rule will be preempted while the fruits and

vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.37-6 [Amended]

2. In § 319.37-6, paragraph (e) is amended by removing the word "Mexico,".
3. Section 319.56-6 is revised to read as follows:

§ 319.56-6 Inspection and other requirements at the port of first arrival.

(a) *Inspection and treatment.* All imported fruits or vegetables shall be inspected, and shall be subject to such disinfection at the port of first arrival as may be required by an inspector, and shall be subject to reinspection at other locations at the option of an inspector. If an inspector finds a plant pest or evidence of a plant pest on or in any fruit or vegetable or its container, or finds that the fruit or vegetable may have been associated with other articles infested with plant pests, the owner or agent of the owner of the fruit or vegetable shall clean or treat the fruit or vegetable and its container as required by an inspector, and the fruit or vegetable shall also be subject to reinspection, cleaning, and treatment at the option of an inspector at any time and place before all applicable

requirements of this subpart have been accomplished.

(b) *Assembly for inspection.* The owner or agent of the owner shall assemble imported fruits and vegetables for inspection at the port of first arrival, or at any other place prescribed by an inspector, at a place and time and in a manner designated by an inspector.

(c) *Refusal of entry.* If an inspector finds that an imported fruit or vegetable is prohibited or is so infested with a plant pest that, in the judgment of the inspector, it cannot be cleaned or treated, or contains soil or other prohibited contaminants, the entire lot may be refused entry into the United States.

(d) *Release for movement.* No person shall move from the port of first arrival any imported fruit or vegetable unless and until an inspector notifies the person (in person, in writing, by telephone, or through electronic means) that the fruit or vegetable:

- (1) Has been released; or
- (2) Requires reinspection, cleaning, or treatment of the fruit or vegetable at that port or at a place other than the port of first arrival, or is prohibited and must be exported from the United States.

(e) *Notice to owner of actions ordered by inspector.* If an inspector orders any disinfection, cleaning, treatment, reexportation, or other action with regard to imported fruits or vegetables, the inspector shall file an emergency action notification (PPQ Form 523) with the owner of the fruits or vegetables or an agent of the owner. The owner must, within the time specified in the PPQ Form 523, destroy the fruits and vegetables, ship them to a point outside the United States, move them to an authorized site, and/or apply treatments or other safeguards to the fruits and vegetables as prescribed by an inspector to prevent the introduction of plant pests into the United States.

(f) *Costs and charges.* The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture will be responsible only for the costs of providing the services of an inspector during regularly assigned hours of duty and at the usual places of duty.¹ The owner of imported fruits or vegetables is responsible for all additional costs of inspection, treatment, movement, storage, or destruction ordered by an inspector under this subpart, including any labor, chemicals, packing materials, or other supplies required. APHIS will not be responsible for any costs or

¹ Provisions relating to costs for other services of an inspector are contained in 7 CFR part 354.

charges, other than those identified in this section.

Done in Washington, DC, this 30th day of November 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-29749 Filed 12-5-95; 8:45 am]

BILLING CODE 3410-34-P

Federal Crop Insurance Corporation

7 CFR Part 401

Rice Endorsement

CFR Correction

In Title 7 of the Code of Federal Regulations, parts 400 to 699, revised as of January 1, 1995, on page 116, in § 401.120, item 9 was inadvertently omitted. The correct text, which should precede item 10, follows:

§ 401.120 Rice endorsement.

* * * * *

9. Contract Changes

The date by which contract charges will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and November 30 preceding the cancellation date for all other counties.

* * * * *

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-190-AD; Amendment 39-9398; AD 95-20-51]

Airworthiness Directives; Boeing Model 767-200 and -300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; extension of comment period.

SUMMARY: This document announces an extension of the comment period for Airworthiness Directive (AD) 95-20-51, applicable to all Model 767-200 and -300 series airplanes. That AD invites comments concerning the requirement to inspect the lower half of the aft trunnion of the main landing gear (MLG) to detect damage, cracking, missing pieces, or corrosion; and correction of discrepancies. This extension of the comment period is necessary to afford all interested persons an opportunity to present their views on the requirements of that AD.

DATES: Effective October 17, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95-20-51, issued September 25, 1995.

Comments for inclusion in the Rules Docket must be received on or before February 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-190-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Information concerning this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James G. Rehr, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2783; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: On October 4, 1995, the FAA issued AD 95-20-51, amendment 39-9398 (60 FR 53109, October 12, 1995), applicable to all Boeing Model 767-200 and -300 series airplanes, which requires that operators perform an external general visual inspection of the lower half of the aft trunnion of the main landing gear (MLG) to detect damage, cracking, missing pieces, or corrosion emanating from the aft trunnion bushing fillet seal or from the aft trunnion crossbolt hole. That AD invites comments on regulatory, economic, environmental, and energy aspects of the rule.

That action was prompted by reports of fractures of the outer cylinder aft trunnion due to stress corrosion cracking. This condition, if not corrected, could result in collapse of the MLG due to the problems associated with stress corrosion cracking in the aft trunnion assembly; collapse of the MLG could lead to loss of control of the airplane during landing, taxiing, and takeoff.

Since the issuance of that AD, a commenter to the rule requested an extension of the comment period. The commenter states that the additional time would provide the public with time to study the requirements of the AD and prepare comments for the Rules Docket.

The FAA has considered this request and finds it appropriate to extend the comment period to give all interested

persons additional time to examine the requirements of the AD and submit comments. Accordingly, the comment period for AD 95-20-51 is extended to February 12, 1996. It should be noted that the effective date of AD 95-20-51 was October 17, 1995; this action does not change that date. Since no other portion of that AD or regulatory information has been changed, the entire rule is not being republished.

Issued in Renton, Washington, on November 28, 1995.

Darrell M. Pederson,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-29646 Filed 12-5-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 95-CE-25-AD; Amendment 39-9452; AD 95-25-07]

Airworthiness Directives; Fairchild Aircraft SA226 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Fairchild Aircraft SA226 series airplanes that are equipped with a part number 27-55001-229 actuator assembly. This action requires replacing the main landing gear door actuator tang and associated hardware with parts of improved design. Reports of the main landing gear doors hanging up and locking the landing gear links on the affected airplanes prompted this action. The actions specified by this AD are intended to prevent the inability to extend the main landing gear because of the main landing gear door actuation roller contacting the lower edge of the tang and causing the linkage to lock over-center.

DATES: Effective January 17, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490; telephone (210) 824-9421. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95-CE-25-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or

at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150; telephone (817) 222-5133; facsimile (817) 222-5960.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Fairchild Aircraft SA226 series airplanes that are equipped with a part number 27-5500-229 actuator assembly was published in the Federal Register on August 7, 1995 (60 FR 40118). The action proposed to require replacing the main landing gear door tangs and associated hardware with parts of improved design. Accomplishment of the proposed action would be in accordance with Fairchild Aircraft Service Bulletin 226-32-059, Issued: February 14, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

In preparing the notice of proposed rulemaking (NPRM), the FAA inadvertently referenced part number (P/N) 27-55001-229 as P/N 27-5500-229 in the preamble and Applicability section of the proposed AD. The FAA is changing the AD to reflect the correct P/N.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the correction noted above and minor editorial corrections. The FAA has determined that these corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 307 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately \$60 an hour. Parts cost approximately \$114 (two main landing gear door actuator tang kits per airplane at \$57 each) per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$108,678.

Fairchild Aircraft has informed the FAA that enough main landing gear door actuator tang kits have been

distributed to equip 11 of the affected airplanes (22 kits). Assuming that each of these kits is installed on an affected airplane, the cost impact upon U.S. operators of the affected airplanes would be reduced \$3,894 from \$108,678 to \$104,784.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

95-25-07 Fairchild Aircraft: Amendment 39-9452; Docket No. 95-CE-25-AD.

Applicability: The following airplane models and serial numbers that are equipped with a part number (P/N) 27-55001-229 actuator assembly, certificated in any category:

Model	Serial Nos.
SA226-T	T201 through T275 and T277 through T291.
SA226-T(B)	T(B) 276 and T(B) 292 through T(B) 417.
SA226-AT	AT001 through AT074.
SA226-TC	TC201 through TC419.

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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 1,000 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the inability to extend the main landing gear because of the main landing gear door actuation roller contacting the lower edge of the tang and causing the linkage to lock over-center, accomplish the following:

(a) Replace the main landing gear door actuator tangs and associated hardware, part numbers 27-55001-249 and 27-55001-250, with new tangs and hardware of improved design, part numbers 27-55001-299 and 27-55001-301. Accomplish this replacement in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft Service Bulletin 226-32-059, Issued: February 14, 1991.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

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

(d) The replacement required by this AD shall be done in accordance with Fairchild Aircraft Service Bulletin 226-32-059, Issued: February 14, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel,

Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street NW., 7th Floor, suite 700, Washington, DC.

(e) This amendment (39-9452) becomes effective on January 17, 1996.

Issued in Kansas City, Missouri, on November 28, 1995.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-29669 Filed 12-5-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 95-ANM-13]

Amendment of Class E Airspace; Sheridan, WY; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace description of a final rule for Amendment of Class E airspace at Sheridan, Wyoming. The final rule was published in the Federal Register on September 29, 1995, Airspace Docket No. 94-ANM-13. This action adds language at the end of the description which slightly expands the airspace to encompass the full instrument approach procedure.

EFFECTIVE DATE: 0901U.T.C., January 4, 1996.

FOR FURTHER INFORMATION CONTACT: James Riley, System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 95-ANM-13, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone number: (206) 227-2537.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 95-24282, Airspace Docket No. 95-ANM-13, published on September 29, 1995 (60 FR 50410), amended the Class E airspace at Sheridan, Wyoming. During the chart preparation process an error was discovered in the Class E5 airspace description whereby the defined airspace does not fully encompass the approach procedure. This action corrects that error by the addition of language in the airspace description that would encompass the instrument approach procedure at Sheridan County Airport.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace description for the Class E airspace at Sheridan, Wyoming, as published in the

Federal Register on September 29, 1995 (60 FR 50410), (Federal Register Document 95-24282; page 50411, column 1), and the description in FAA Order 7400.9C, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

* * * * *

ANM WY E5 Sheridan, WY [Corrected]

Sheridan County Airport, WY

(lat. 44°46'15" N, long. 106°58'43" W

Sheridan VORTAC

(lat. 44°50'32" N, long. 107°03'40" W)

That airspace extending upward from 700 feet above the surface within a 6.1-mile radius of the Sheridan County Airport; that airspace extending upward from 1,200 feet above the surface within 6.1 miles southwest and 8.7 miles northeast of the Sheridan VORTAC 138° and 318° radials extending from 16.1 miles northwest to 29.6 miles southeast of the VORTAC, and that airspace southeast of Sheridan bounded on the north by a line located 4.3 miles south of and parallel to the Sheridan VORTAC 104° radial, on the east by a 30.5-mile radius of the Sheridan VORTAC, and on the south by a line located 8.7 miles north of and parallel to the Sheridan VORTAC 138° radial, and that airspace southeast of the Sheridan County Airport, within 4.5 miles southwest of the 157° bearing from the airport, extending from the 6.1-mile radius to 17.6 miles southeast of the airport.

* * * * *

Issued in Seattle, Washington, on November 21, 1995.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95-29347 Filed 12-5-95; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-36530, International Series Release No. 893, File No. S7-26-95]

RIN 3235-AG65

Exemption of the Securities of the United Mexican States Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is adopting an amendment to Rule 3a12-8 under the Securities Exchange Act of 1934 that would designate debt obligations issued by the United

Mexican States ("Mexico") as "exempted securities" for the purpose of marketing and trading futures contracts on those securities in the United States. The purpose of this amendment is solely to permit futures on Mexican Government debt to be traded in the United States. This change is not intended to have any substantive effect on the operation of the Rule.

EFFECTIVE DATE: December 6, 1995.

FOR FURTHER INFORMATION CONTACT:

James T. McHale, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission (Mail Stop 5-1), 450 Fifth Street, N.W., Washington, D.C. 20549, at 202/942-0190.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act ("CEA"), it is unlawful to trade a futures contract on any individual security, unless the security in question is an exempted security (other than a municipal security) for the purposes of the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act").¹ Debt obligations of foreign governments are not exempted securities under either of these statutes. The Commission, however, has adopted Rule 3a12-8 under the Exchange Act ("Rule")² to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of marketing and trading futures contracts on those securities in the United States. The foreign governments currently designated in the Rule are Great Britain, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, and the Kingdom of Spain (the "Designated Foreign Governments"). As a result of being included in the Rule, futures contracts on the debt obligations of these countries may be sold in the United States, as long as the other terms of the Rule are satisfied.

On September 11, 1995, the Commission issued a release proposing to amend Rule 3a12-8 to designate the debt obligations of Mexico as exempted securities, solely for the purpose of futures trading.³ Four commentators, the

¹ The term "exempted security" is defined in Section 3 of the Securities Act, 15 U.S.C. 77c, and Section 3(a)(12) of the Exchange Act, 15 U.S.C. 78c(a)(12).

² 17 CFR 240.3a12-8.

³ See Securities Exchange Act Release No. 36213 ("Proposing Release") (September 11, 1995), 60 FR 48078 (September 18, 1995).

Chicago Mercantile Exchange ("CME"), Euro Brokers Investment Corporation ("Euro Brokers"), Sakura Dellsher, Inc. ("SDI"), and Centre Financial Products Limited ("Centre Financial"), submitted letters supporting the proposal.⁴

The Commission is adopting this amendment to the Rule, adding Mexico to the list of countries whose debt obligations are exempted by Rule 3a12-8. In order to qualify for the exemption, futures contracts on debt obligations of Mexico would have to meet all the other requirements of the Rule.

II. Background

Rule 3a12-8 was adopted in 1984⁵ pursuant to the exemptive authority in Section 3(a)(12) of the Exchange Act in order to provide limited relief from the CEA's prohibition on the trading of futures overlying individual securities.⁶ As originally adopted, the Rule provided that debt obligations of the United Kingdom and Canada would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of "qualifying foreign futures contracts" on such securities, so long as the securities in question were neither registered under the Securities Act nor the subject of any American depository receipt so registered. A futures contract on such a debt obligation is deemed under the Rule to be a "qualifying foreign futures contract" if delivery under the contract is settled outside the United States and is traded on a board of trade.⁷

⁴ See Letter from William J. Brodsky, President and Chief Executive Officer, CME to Jonathan G. Katz, Secretary, Commission, dated October 18, 1995; letter from Donald R.A. Marshall, President, Euro Brokers to Jonathan G. Katz, Secretary, Commission, dated October 18, 1995; letter from Leo Melamed, Chairman and Chief Executive Officer, SDI to Jonathan G. Katz, Secretary, Commission, dated October 18, 1995; and letter from Richard L. Sandor, Ph.D., Chairman and Chief Executive Officer, Centre Financial to Jonathan G. Katz, Secretary, Commission, dated October 19, 1995.

⁵ Securities Exchange Act Release Nos. 20708 ("Original Adopting Release") (March 2, 1984), 49 FR 8595 (March 8, 1984) and 19811 ("Original Proposing Release") (May 25, 1983), 48 FR 24725 (June 2, 1983).

⁶ In enacting the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission ("CFTC") had intended to bar the sale of futures contracts on debt obligations of the United Kingdom of Great Britain and Northern Ireland ("United Kingdom") to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. See Original Proposing Release, *supra* note 5, 48 FR at 24725 [citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)].

⁷ As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. See Securities Exchange Act

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities in the United States while requiring offerings of foreign government securities to comply with the federal securities laws. Accordingly, the conditions set forth in the Rule were designed to ensure that, absent registration, a domestic market in foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the securities law registration requirements.

Subsequently, the Commission amended the Rule to include the debt securities issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, Italy, and Spain.⁸

The CME has informed the Commission that U.S. citizens may be interested in futures products based on the debt obligations of Mexico, and has requested that Rule 3a12-8 be amended to facilitate such trading.⁹ The CME has represented that it intends to develop a contract market in Mexican Certificados de la Tesoreria de la Federacion ("Cetes"), which are short-term Mexican government securities, and in Mexican Brady bonds, a class of longer term sovereign Mexican debt issues.¹⁰

Release No. 24209 (March 12, 1987), 52 FR 8875 (March 20, 1987).

⁸ As originally adopted, the Rule applied only to British and Canadian government debt securities. See Original Adopting Release, *supra* note 5. In 1986, the Rule was amended to include Japanese government debt securities. See Securities Exchange Act Release No. 23423 (July 11, 1986), 51 FR 25996 (July 18, 1986). In 1987, the Rule was amended to include debt securities issued by Australia, France and New Zealand. See Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987). In 1988, the Rule was amended to include debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. See Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988). In 1992 the Rule was again amended to (1) include debt securities offered by the Republic of Ireland and Italy, (2) change the country designation of "West Germany" to the "Federal Republic of Germany," and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. See Securities Exchange Act Release No. 30166 (January 6, 1992), 57 FR 1375 (January 14, 1992). Finally, the Rule was amended to include debt securities issued by the Kingdom of Spain. See Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994).

⁹ See Letter from William J. Brodsky, President and Chief Executive Officer, CME, to Arthur Levitt, Jr., Chairman, Commission, dated May 3, 1995.

¹⁰ The marketing and trading of foreign futures contracts is subject to regulation by the CFTC. In particular, Section 4b of the CEA authorizes the CFTC to regulate the offer and sale of foreign futures contracts to U.S. residents, and Rule 9 (17 CFR 30.9), promulgated under Section 2(a)(1)(A) of the CEA, is intended to prohibit fraud in connection

Mexican Brady bonds were issued pursuant to the Brady plan, which allows developing countries to restructure their commercial bank debt by issuing long-term dollar denominated bonds.¹¹ The Commission understands that Mexican Brady bonds are currently traded primarily in the over-the-counter market in the United States.

The Commission is amending Rule 3a12-8 to add Mexico to the list of countries whose debt obligations are deemed to be "exempted securities" under the terms of the Rule. Under this amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States,¹² that the futures contracts require delivery outside the United States,¹³ and that the contracts be traded on a board of trade) would continue to apply.

III. Discussion

A. Comment Letters

As noted above, the Commission received four comment letters, all in support of the proposal.¹⁴ The CME additionally recommended that the Commission eliminate its practice of granting exemptions under the Rule on

with the offer and sale to U.S. persons of futures contracts executed on foreign exchanges. Additional rules promulgated under 2(a)(1)(A) of the CEA govern the domestic offer and sale of futures and options contracts traded on foreign boards of trade. These rules require, among other things, that the domestic offer and sale of foreign futures be effected through the CFTC registrants or through entities subject to a foreign regulatory framework comparable to that governing domestic futures trading. See 17 CFR 30.3, 30.4, and 30.5 (1991).

¹¹ There are several types of Brady bonds, but "Par Bradys" and "Discount Bradys" represent the great majority of issues in the Brady bond market. In general, both Par Bradys and Discount Bradys are secured as to principal at maturity by U.S. Treasury zero-coupon bonds. Additionally, usually 12 to 18 months of interest payments are also secured in the form of a cash collateral account, which is maintained to pay interest in the event that the sovereign debtor misses an interest payment.

¹² The Commission notes that neither Mexican Cetes nor Mexican Brady bonds are currently registered in the United States. The Commission is aware, however, that certain Mexican sovereign debt is registered in the United States and that the trading of futures on these debt issues would not be exempted under Rule 3a12-8 from the CEA's prohibition on the trading of futures overlying individual securities that are not exempted securities.

¹³ The CME's proposed futures contracts will be cash-settled (*i.e.*, settlement of the futures contracts will not entail delivery of the underlying securities). The Commission has recognized that a cash-settled futures contract is consistent with the requirement of the Rule that delivery must be made outside the United States. See Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987).

¹⁴ See *supra* note 4.

a country-by-country basis.¹⁵ In support of adding Mexico to the list of Designated Foreign Governments in the Rule, the CME restated its belief that futures on Mexican sovereign debt would serve a valuable economic purpose and would benefit both U.S. investors and the Mexican economy. The CME asserted that Mexican Brady bonds are actively traded in the over-the-counter market in the United States, and that dealers and investors in Mexican Brady bonds could use the CME's proposed futures contracts to hedge the price risk in holding the underlying bonds.

Euro Brokers noted that while the underlying cash market for emerging market debt securities, including Mexico, has experienced considerable growth, there does not exist a proper hedging vehicle for positions in emerging market debt. According to Euro Brokers, this lack of an effective hedging tool limits the growth, liquidity, and stability of the market. If the CME is permitted to market and trade futures contracts on Mexican sovereign debt, Euro Brokers asserted, traders and investors will have the ability to hedge their exposure, thus generating depth, liquidity, and stability for the emerging markets as a whole both in the cash and futures markets.

SDI additionally suggested that the Commission be "flexible" in allowing the debt obligations of additional foreign governments to qualify for such exempt status.

Finally, according to Centre Financial, the fact that Mexico's debt is not rated in one of the two highest rating categories by at least two Nationally Recognized Statistical Rating Organizations ("NRSROs") is immaterial when considering the obligations as the basis of a futures or options contract. Moreover, Centre Financial suggested that the Commission consider an exemption for all sovereign debt, thereby allowing individual exchanges to determine whether a futures or options contract on a country's debt is appropriate.

It should be noted that in the Proposing Release, the Commission sought comment on: the appropriateness of designating Mexican sovereign debt as exempted securities even though its long-term debt is not rated in one of the

two highest rating categories by at least two NRSROs (a factor the Commission has traditionally looked to as an indication of the liquidity of the underlying market); whether debt ratings should continue to be used in evaluating proposals to add countries to the Rule, and what alternative criteria, such as volume and depth of trading or amount of outstanding debt, could be used; whether the proposed amendment is appropriate in light of the fact that Mexico would be the first emerging market country to be included as a Designated Foreign Government; whether the CME's proposal to develop a contract market in Mexican Brady bonds raises any unique issues; and the general application and operation of the Rule given the increased globalization of the securities markets since the Rule was adopted. The commenters did not address all of these issues, but instead focused on the economic benefits of including Mexico as a Designated Foreign Government and adopting a liberal approach for further amendments to the Rule to include the sovereign debt of other countries.

B. Analysis

For the reasons discussed below, the Commission finds that it is consistent with the public interest and the protection of investors that Rule 3a12-8 be amended to include the sovereign debt obligations of Mexico. The Commission believes that the trading of futures on Mexican sovereign debt could provide U.S. investors and dealers with a vehicle for hedging the risks involved in holding Mexican debt instruments and that the sovereign debt of Mexico should be subject to the same regulatory treatment under the Rule as that of the Designated Foreign Governments for purposes of trading futures contracts on such debt obligations by U.S. persons.

In determining whether to amend the Rule to add new countries, the Commission has considered whether there is an active and liquid secondary trading market in the particular sovereign debt. The market for Mexican sovereign debt instruments appears to be active and liquid. As of March 31, 1995, there was approximately US\$87.5 billion face amount Mexican government debt issued and outstanding of various classes and maturities.¹⁶ According to the CME petition, the cash market for Cetes evidences active trading. For example, between 1993 and 1994 the monthly trading volume (in

principal amount), according to the CME, of Cetes ranged from a low of approximately US\$18.5 billion to a high of US\$1.1 trillion. Moreover, according to a recent survey of members of the Emerging Markets Traders Association ("EMTA"), Mexican debt instruments are one of the most actively traded of all emerging markets instruments. According to the survey, the total annual trading volume for Mexican Brady bonds amounted to approximately US\$282.3 billion.¹⁷ As is the case for all sovereign issuers, there are less actively traded Mexican sovereign debt issues, but the Commission believes that as a whole the market for Mexican sovereign debt is sufficiently liquid and deep for purposes of Rule 3a12-8.

In amending the Rule to include the debt obligations of Mexico, however, the Commission has considered additional factors relating to Mexican government debt. In connection with some of the prior amendments to the Rule, the Commission noted that the long-term sovereign debt of those countries was rated in one of the two highest rating categories by at least two NRSROs.¹⁸ This factor, as previously stated by the Commission, could be viewed as indirect evidence of an active and liquid secondary trading market. Mexico's long-term sovereign debt obligations are not rated in one of the two highest rating categories.¹⁹

Although the Commission in 1987 proposed to incorporate a rating standard specifically exempting securities issued by any country with outstanding long-term sovereign debt rated in one of the two highest rating categories by at least two NRSROs,²⁰ it ultimately declined to adopt such a rule.²¹ At the time of the 1987 Rule

¹⁷ The survey, which was responded to by 80 out of 333 members of the EMTA, was prepared for the EMTA by Price Waterhouse LLP. See 1994 Debt Trading Volume Survey, Emerging Markets Traders Association (May 1, 1995).

¹⁸ See Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988) (Austria, Denmark, Finland, the Netherlands, Switzerland, and [West] Germany); Securities Exchange Act Release No. 30166 (January 6, 1992), 57 FR 1375 (Republic of Ireland and Italy); Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994) (Kingdom of Spain).

¹⁹ As of June, 1995, Standard and Poor's Corp. ("S&P") rated Mexico's long-term foreign currency debt BB and its long-term local currency debt BBB-. As of the same date, Mexico's Bonos de Desarrollo (Bonds) were rated Baa3 by Moody's Investors Service.

²⁰ See Securities Exchange Act Release No. 24428 (May 5, 1987), 52 FR 18237 (May 14, 1987).

²¹ See Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987).

¹⁵ Instead of the current country-by-country analysis, the CME suggested that the Commission's approach should be to permit futures trading on any country's sovereign debt, provided that the futures contracts do not allow delivery of unregistered foreign government securities in the United States. See CME comment letter, *supra* note 4. This approach would require an amendment to Rule 3a12-8 that has not been proposed at this time.

¹⁶ See Exhibit D to Form 18-K, Annual Report for Foreign Governments and Political Subdivisions Thereof, filed by Mexico on June 30, 1995.

proposal, the Commission expressed concerns that in the absence of such a requirement, the Rule might be used as a subterfuge to market or trade unregistered sovereign foreign debt through futures trading. The Commission, however, indicated that it did not intend to preclude futures trading on foreign debt that did not meet this ratings requirement and indeed subsequently sought comment on the feasibility of other factors for consideration, such as volume and depth of trading in a sovereign issuer's debt.

As discussed above, the Commission has independently determined that it is appropriate to exempt the sovereign debt of Mexico under the Rule because of the overall depth and liquidity of the existing cash market for Mexican sovereign debt. The Commission does not believe that either Mexico's status as an emerging market country with potentially more volatile debt prices, or its issuance of Brady bonds changes this conclusion.

In the Proposing Release the Commission solicited comment on whether there are alternative approaches to the country-by-country designation process for adding countries to the Rule. The Commission intends to consider this issue further, but does not believe it should delay the inclusion of Mexico in the list of Designated Foreign Governments pending action on a more generic approach. Nevertheless, the Commission continues to welcome suggestions on an objective means of including countries within Rule 3a12-8 that are consistent with the Rule's overall objectives.

IV. Regulatory Flexibility Act Consideration

Chairman Levitt has certified in connection with the Proposing Release that this amendment, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this certification.

V. Effects on Competition and Other Findings

Section 23(a)(2) of the Exchange Act²² requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to balance any impact with the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the amendment to the Rule in light of the standards cited in section 23(a)(2) and believes that adoption of

the amendment will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As stated above, the amendment is designed to assure the lawful availability in this country of Mexican government bond futures that otherwise would not be permitted to be marketed under the terms of the CEA. The amendment thus serves to expand the range of financial products available in the United States and enhances competition in financial markets. Insofar as the Rule contains limitations, they are designed to promote the purposes of the Exchange Act by ensuring that futures trading on Mexican government securities is consistent with the goals and purposes of the Federal securities laws by minimizing the impact of the Rule on securities trading and distribution in the United States.

Because the amendment to the rule is exemptive in nature, the Commission has determined to make the foregoing action effective immediately upon publication in the Federal Register.²³

VI. Statutory Basis

The amendment to rule 3a12-8 is being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(12) and 23(a), 15 U.S.C. 78c(a)(12) and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Text of the Adopted Amendment

For the reasons set forth above, the Commission is amending part 240 of chapter II, title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

2. § 240.3a12-8 is amended by removing the word "or" at the end of paragraph (a)(1)(xiv), removing the "period" at the end of paragraph (a)(1)(xv) and adding "; or" in its place, and adding paragraph (a)(1)(xvi) to read as follows:

§ 240.3a12-8 Exemption for designated foreign government securities for purposes of futures trading.

- (a) * * *
- (1) * * *
- (xvi) the United Mexican States.

* * * * *

By the Commission.
 Dated: November 30, 1995.
 Margaret H. McFarland,
Deputy Secretary.
 [FR Doc. 95-29618 Filed 12-5-95; 8:45 am]
 BILLING CODE 8010-01-U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM96-3-000; Order No. 585]

Delegation of Authority to the Secretary, the Director of the Office of Electric Power Regulation and the General Counsel

Issued: November 30, 1995.
AGENCY: Federal Energy Regulatory Commission, DOE.
ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is revising its regulations to expand delegations to the staff in the following areas: The Secretary would be authorized to toll the time for action on requests for rehearings and issue notices in compliance with section 206(b) of the Federal Power Act, as amended by the Regulatory Fairness Act; the Director of the Office of Electric Power Regulation would be authorized to take appropriate action on uncontested interim electric rate motions that would result in lower rates, pending Commission action on settlement agreements; and the General Counsel would be authorized to grant uncontested applications for exempt wholesale generator status that do not present unusual or interpretation issues and to act on uncontested motions to withdraw EWG applications. Because of increased workload, the Commission is taking these actions in the interest of administrative efficiency.

EFFECTIVE DATE: This final rule is effective January 5, 1996.
ADDRESSES: 888 First Street NE., Washington, DC 20426.
FOR FURTHER INFORMATION CONTACT: Kasha Ciaglo, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington DC 20426, (202) 208-2165.

²² 15 U.S.C. 78w(a)(2).

²³ 15 U.S.C. 553(d).

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (800) 856-3920. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200 bps, full duplex no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's contractor, La Dorn Systems Corporation, also located in the Public Reference Room in 888 First Street NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission is adopting new regulations amending: (1) 18 CFR 375.302 to authorize the Secretary to toll the time for action on requests for rehearing and issue notices in compliance with section 206(b) of the Federal Power Act (FPA), as amended by the Regulatory Fairness Act of 1988 (RFA);¹ (2) 18 CFR 375.308 to authorize the Director of the Office of Electric Power Regulation (Director) to take appropriate action on uncontested interim electric rate motions that would result in lower rates, pending Commission action on settlement agreements; and (3) 18 CFR 385.309 to authorize the General Counsel to grant uncontested applications for exempt wholesale generator (EWG) status that do not present unusual or interpretation issues and to act on uncontested motions to withdraw EWG applications.² These amendments are necessary in the interest of administrative efficiency.

II. Discussion

In recent years, the Commission has experienced a significant increase in its electric program workload. In light of

the Commission's new responsibilities under the Energy Power Act of 1992 and significant competitive changes occurring in the electric utility industry, the Commission anticipates further increases in electric items such as rate filings, complaints, declaratory orders, corporate regulation cases, and EWG applications.³

The Commission is concerned about its ability to thoroughly and timely address the many significant technical, legal and policy issues that it will need to decide in the next few years⁴ while simultaneously avoiding a significant backlog of more routine items. The Commission believes that it can meet its increasing workload, but only by developing more efficient ways to process cases. To this end, the Commission is expanding delegations of authority to the Secretary, the Director, and the General Counsel (and their designees) to rule on routine, uncontested, non-policy matters. The delegations should reduce overall Commission time spent on more routine items and thus provide a greater opportunity to address the more significant issues and proceedings. Thus, the delegation regulations contained in subpart C of part 375 are amended by this rule as described below.

A. Delegations to the Secretary Under § 375.302

1. Rehearing for Purpose of Further Consideration

Under 18 CFR 385.713(f), the Commission has 30 days within which to act on a request for rehearing of a Commission order, or the request is deemed denied. While the Commission makes every effort to dispose of requests for rehearing within 30 days, the difficulty of the issues raised or the timing of the 30-day period in relation to the Commission's scheduled meetings sometimes makes this impossible. In these instances, the Commission issues an order granting rehearing for the purpose of further

consideration. The Secretary, or the Secretary's designee, will be authorized to toll the time for action on rehearings of Commission action under *all* of the Commission's statutes, not just the FPA. This authority will apply only to stand-alone rehearing requests. In other words, if a rehearing request is combined with any other request for Commission action, such as a request to intervene in a proceeding or for a stay of a proceeding, the Commission will continue to act on the rehearing request and the other requests contained in the filing, according to current procedures.

2. RFA Notices

When the Commission institutes an investigation under section 206 of the FPA, section 206(b) requires the Commission to provide its best estimate of when it will complete the proceeding.⁵ This is known as an RFA notice. Normally, the Commission, in its order instituting the investigation, directs the presiding judge to provide a report estimating when the judge will issue an initial decision. The Commission, based on the judge's report, then estimates when it believes it will be able to complete the case. The Commission's estimate is affected by when staff believes it will be able to present a final order to the Commission. RFA notices will now be delegated to the Secretary, or the Secretary's designee. The Secretary will estimate the expected date of a final order based on discussion with appropriate staff.

B. Delegation to the Director Under § 375.308

When parties reach a settlement in an electric rate case calling for reductions in the rates in effect subject to refund, the selling public utility often files with the Commission for permission to charge lower settlement rates during the period when the Commission is evaluating the settlement agreement. This is to avoid further refunds that would be required if the Commission accepts the settlement. Such motions are almost always granted by the Commission. However, this currently requires the preparation of an interim electric rate order. The ability to take appropriate action on such interim rate motions that are uncontested will now be delegated to the Director, or the Director's designee. To the extent that a motion to charge interim rates is contested or is combined with any other request for Commission action, the

³ For example, there were 874 ER filings in fiscal year 1992, 988 ER filings in fiscal year 1993, 1698 ER filings in fiscal year 1994, and 1865 ER filings in fiscal year 1995.

⁴ See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities, and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Notice of Proposed Rulemaking, 60 FR 17662 (Apr. 7, 1995), IV FERC Stats. and Regs. ¶ 32,514 (1995). Notice of Technical Conference and Request for Comments, Real-Time Information Networks, 60 FR 17726 (Apr. 7, 1995), IV FERC Stats. and Regs. ¶ 35,530; and Inquiry Concerning Alternative Power Pooling Institutions Under the Federal Power Act, Notice of Inquiry and Request for Comments, 59 FR 54851 (Nov. 2, 1994), IV Stats. and Regs. ¶ 35,529 (1994).

⁵ This requirement was added to section 206 by the Regulatory Fairness Act of 1988. See 16 U.S.C. 824e(b) (1994).

¹ 16 U.S.C. 824e(b) (1994).

² Applications for the determination of EWG status are filed pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended by the Energy Policy Act of 1992 (PUHCA). 15 U.S.C. 79z-5a (1994).

Commission will continue to act on the motion according to current procedures.

C. Delegation to the General Counsel Under §375.309

To date, the Commission has acted on over 200 EWG applications. The vast majority of these applications have not presented unusual issues or issues requiring the interpretation of section 32 of PUHCA. However, the preparation of EWG orders has been time-consuming. The responsibility to grant uncontested EWG applications will now be delegated to the General Counsel, or the General Counsel's designee. Applications presenting unusual or interpretation issues will continue to be brought to the Commission, as will any contested applications and applications in which staff recommends denial of EWG status.⁶

In addition, the General Counsel or the General Counsel's designee will be authorized to act on uncontested motions to withdraw applications for EWG status. Under 18 CFR 365.5, if the Commission has not acted upon an EWG application within 60 days, it will be deemed to have been granted. While most motions to withdraw EWG applications are granted by operation of law 15 days after filing pursuant to 18 CFR 385.216(b), Commission action on a motion to withdraw an EWG application is necessary if the motion is contested or if the 60th day for action on the EWG application is sooner than the 15th day after the filing of the motion to withdraw. Contested motions to withdraw will be acted on by the Commission. However, this delegation will allow the General Counsel or the General Counsel's designee to act on uncontested motions in a timely fashion.

III. Conclusion

As explained above, in the interests of administrative efficiency, we will amend: (1) 18 CFR 375.302 to add that the Secretary, or the Secretary's designee, is authorized to toll the time for action on stand-alone requests for rehearing, and to issue RFA notices; (2) 18 CFR 375.308 to authorize the Director, or the Director's designee, to act on uncontested, stand-alone interim electric rate motions that would result in lower rates, pending Commission action on settlement agreements; and (3) 18 CFR 375.309 to authorize the General Counsel, or the General Counsel's designee, to grant uncontested EWG applications not involving unusual or interpretation issues, and to act on

⁶Because there is no rehearing available on EWG applications, denials will continue to be addressed by the Commission.

uncontested motions to withdraw EWG applications.

IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.⁷ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.⁸ No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural.⁹ As explained above, this final rule is procedural and ministerial in nature, and promotes internal administrative efficiency. Accordingly, no environmental consideration is necessary.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act¹⁰ requires rulemakings either to contain a description and analysis of the impact the rule will have small entities or a certification that the rule will not have a substantial economic impact on a substantial number of small entities. The Commission certifies that promulgating this rule does not represent a major Federal action having a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

VI. Information Collection Statement

The Paperwork Reduction Act of 1995¹¹ authorizes the Office of Management and Budget (OMB) to review and approve information collection requirements imposed by agency rule. These requirements are submitted by Federal agencies in accordance with OMB's regulations,¹² as appropriate. However, this order neither contains new information collection requirements nor modifies existing information collection requirements in the Commission's regulations. Therefore, this final rule is not subject to OMB approval. A copy of this rule will be sent to OMB for informational purposes only.

⁷Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), *FERC Stats. and Regs. Regulations Preambles 1986-1990* ¶ 30,783 (1987) (codified at 18 CFR part 380).

⁸18 CFR 380.4.

⁹18 CFR 380.4(a)(2)(ii).

¹⁰5 U.S.C. 601-612 (1994).

¹¹44 U.S.C. 3507 *et seq.* (1994).

¹²5 CFR Part 1320.

VII. Administrative Findings and Effective Date

The Administrative Procedure Act (APA)¹³ requires rulemakings to be published in the Federal Register. The APA also mandates that an opportunity for comments be provided when an agency promulgates regulations. However, notice and comment are not required under the APA when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.¹⁴ The Commission finds that notice and comment are unnecessary for this rulemaking. As explained above, this final rule is procedural and ministerial in nature and is being promulgated to advance internal administrative efficiency. The Commission is merely amending its rules to improve the efficiency with which certain routine items are processed.

The Commission will make this rule effective January 5, 1996.

List of Subjects in 18 CFR Part 375

Authority delegations (Government agencies), Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends part 375, chapter I of title 18, Code of Federal Regulations, as set forth below.

PART 375—THE COMMISSION

1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 791-825r, 2601-2645; 42 U.S.C. 7101-7352.

2. In § 375.302, paragraphs (v) and (w) are added to read as follows:

§ 375.302 Delegations to the Secretary.

* * * * *

(v) Toll the time for action on requests for rehearing.

(w) Issue notices in compliance with section 206(b) of the Federal Power Act.

3. In § 375.308, paragraph (a) is amended by adding paragraph (a)(4) to read as follows:

§ 375.308 Delegations to the Director of the Office of Electric Power Regulation.

* * * * *

(a) * * *

(4) Take appropriate action on uncontested interim electric rate

¹³5 U.S.C. 551-559 (1994).

¹⁴5 U.S.C. 553(B) (1994).

motions that would result in lower rates, pending Commission action on settlement agreements.

* * * * *

4. In § 375.309, paragraph (g) is added to read as follows:

§ 375.309 Delegations to the General Counsel.

* * * * *

(g) Grant uncontested applications for exempt wholesale generator status that do not involve unusual or interpretation issues and to act on uncontested motions to withdraw such applications.

[FR Doc. 95-29664 Filed 12-5-95; 8:45 am]

BILLING CODE 6717-01-P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960-AE39

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Dates for Hemic and Lymphatic System, Childhood Mental Disorders, and Malignant Neoplastic Diseases Listings

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: The Social Security Administration (SSA) issues listings of impairments to evaluate disability and blindness under the Social Security and supplemental security income (SSI) programs. This rule extends the expiration dates for the hemic and lymphatic system, childhood mental disorders, and malignant neoplastic diseases listings. We have made no revisions to the medical criteria in the listings; they remain the same as they now appear in the Code of Federal Regulations. This extension will ensure that we continue to have medical evaluation criteria in the listings to adjudicate claims for disability based on hemic and lymphatic system impairments, childhood mental disorders, and malignant neoplastic diseases at step three of our sequential evaluation process.

EFFECTIVE DATE: This regulation is effective December 6, 1995.

FOR FURTHER INFORMATION CONTACT: Regarding this Federal Register document—Harry J. Short, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-6243; regarding eligibility or filing for benefits—our

national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION: On December 6, 1985, we published revised listings, including the hemic and lymphatic system and malignant neoplastic diseases listings (50 FR 50068), in parts A and B of appendix 1 (Listing of Impairments) to subpart P of part 404. On December 12, 1990, we published revised childhood mental disorders listings (55 FR 51208) in part B of appendix 1. We use the listings at the third step of the sequential evaluation process to evaluate claims filed by adults and children for benefits based on disability and blindness under the Social Security and SSI programs. The listings describe impairments considered severe enough to prevent a person from doing any gainful activity, or, for an individual under age 18 applying for SSI benefits based on disability, from functioning independently, appropriately, and effectively in an age-appropriate manner. We use the criteria in part A mainly to evaluate impairments of adults. We use the criteria in part B first to evaluate impairments of individuals under age 18. If those criteria do not apply, we may use the criteria in part A.

When we published revised listings in 1985 and 1990, we indicated that medical advances in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated. Accordingly, we established a date of December 6, 1993, on which the hemic and lymphatic system and malignant neoplastic diseases listings would no longer be effective, and a date of December 12, 1995, on which the childhood mental disorders listings would no longer be effective, unless extended by the Secretary of Health and Human Services (the Secretary) or revised and promulgated again. Under section 102 of the Social Security Independence and Program Improvements Act of 1994, Public Law 103-296, this rulemaking authority was transferred from the Secretary to the Commissioner of Social Security (the Commissioner).

Subsequently, we issued a final rule on December 6, 1993 (58 FR 64121) extending the expiration date of the hemic and lymphatic system and malignant neoplastic diseases listings, as well as several other body system listings. That rule provided that the hemic and lymphatic system and malignant neoplastic diseases listings would no longer be effective on December 6, 1995. Also that rule republished the expiration dates that

were previously established through the rulemaking process for the other listings, and provided that the childhood mental disorders listings would no longer be effective on December 12, 1995.

In this final regulation, we are extending for eighteen months the dates on which the hemic and lymphatic system listing, the malignant neoplastic diseases listing and the childhood mental disorders listing will no longer be effective. The hemic and lymphatic system and the malignant neoplastic diseases listings will therefore no longer be effective on June 6, 1997. The childhood mental disorders listing will therefore no longer be effective on June 12, 1997. We believe that the requirements in these listings are still valid for our program purposes. Specifically, if we find that an individual has an impairment that meets the statutory duration requirement and also meets or is equivalent in severity to an impairment in the listings, we will find that the individual is disabled without completing the remaining steps of the sequential evaluation process. We do not use the listings to find that an individual is not disabled. Individuals whose impairments do not meet or equal the criteria of the listings receive individualized assessments at the subsequent steps of the sequential evaluation process.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103-296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this regulation only extends the dates on which the hemic and lymphatic system, childhood mental disorders, and malignant neoplastic diseases listings will no longer be effective. It makes no substantive changes to the listings. The current regulations expressly provide that the listings may be extended, as well as revised and promulgated again. Therefore, opportunity for prior

comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in the listings. However, without an extension of the expiration dates for the hemic and lymphatic system, childhood mental disorders, and malignant neoplastic diseases listings, we will lack regulatory guidelines for assessing hemic and lymphatic system impairments, childhood mental disorders, and malignant neoplastic diseases at the third step of the sequential evaluation processes after the current expiration dates of the listings. In order to ensure that we continue to have regulatory criteria for assessing these impairments under the listings, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This regulation imposes no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: November 30, 1995.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set forth in the preamble, part 404, subpart P, chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d) through (h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405 (a), (b), and (d) through (h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 902(a)(5)).

2. Appendix 1 to subpart P of part 404 is amended by revising items 8, 14, and 15 of the introductory text before part A to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

8. Hemic and Lymphatic System (7.00 and 107.00): June 6, 1997.

* * * * *

14. Mental Disorders (112.00): June 12, 1997.

15. Neoplastic Diseases, Malignant (13.00 and 113.00): June 6, 1997.

* * * * *

[FR Doc. 95-29579 Filed 12-5-95; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

COTP Los Angeles-Long Beach, CA Regulation 93-013

CFR Correction

In Title 33 of the Code of Federal Regulations, parts 125 to 199, revised as of July 1, 1995, § 165.T1103, appearing on page 617, should be removed.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 185

[PP 5E4429/R2182; FRL-4983-2]

RIN 2070-AB78

Oxyfluorfen; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the herbicide oxyfluorfen in or on the raw agricultural

commodities blackberry and raspberry. The regulation to establish maximum permissible levels for residues of the herbicide was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4) pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA). EPA is also deleting the metabolites of oxyfluorfen containing the diphenyl ether linkage from certain tolerance expressions.

EFFECTIVE DATE: This regulation becomes effective December 6, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 5E4429/R2182], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 5E4429/R2182]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor,

Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail:

jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 27, 1995 (60 FR 49816), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 5E4429 to EPA on behalf of the Agricultural Experiment Stations of Oregon, New York, Virginia, and Washington. The petition requests that the Administrator, pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, amend 40 CFR 180.381 by establishing a tolerance for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)-benzene] in or on the raw agricultural commodities blackberry and raspberry at 0.05 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the

requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 5E4429/R2182] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 5E4429/R2182], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an

annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 185

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 3, 1995.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 180 and 185 are amended as follows:

PART 180—[AMENDED]

1. In part 180:
a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.381, by revising the introductory text of paragraph (a) and by revising paragraph (b), to read as follows:

§ 180.381 Oxyfluorfen; tolerances for residues.

(a) Tolerances are established for residues of the herbicide oxyfluorfen [2-

chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] in or on the following raw agricultural commodities:

* * * * *

(b) Tolerances with regional registration are established for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] in or on the following raw agricultural commodities:

Commodity	Parts per million
Blackberry	0.05
Garbanzo beans	0.05
Guava	0.05
Papaya	0.05
Raspberry	0.05
Taro (corms and leaves)	0.05

PART 185—[AMENDED]

2. In part 185:
 a. The authority citation for part 185 continues to read as follows:
 Authority: 21 U.S.C. 346a and 348.

b. By amending § 185.4600 by revising the introductory text to read as follows:

§ 185.4600 Oxyfluorfen.

A regulation is established permitting residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] in or on the following processed food when present therein as a result of application of the herbicide to growing crops:

* * * * *

[FR Doc. 95-29557 Filed 12-5-95; 8:45 am]
 BILLING CODE 6560-50-F

40 CFR Part 763

[OPPTS-00173A; FRL-4980-2]

Technical Amendments to TSCA Regulations to Update Addresses; Correction

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule; correction.

SUMMARY: This document corrects a technical amendment issued by EPA and published in the Federal Register on July 3, 1995.

DATES: The effective date of this correction is December 6, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551; e-mail: TSCA Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 3, 1995, EPA issued a technical amendment to several regulations under the Toxic Substances Control Act (TSCA). The amendments revised addresses for mailing information to, requesting information from, or otherwise contacting certain offices in the Office of Pollution Prevention and Toxics. Two of the technical amendments made changes to sections that had previously been removed from 40 CFR part 763 by technical amendments that published in the Federal Register on June 19, 1995 (60 FR 31917). This document corrects those two technical amendments.

1. In FR Doc. 95-16287, July 3, 1995, on page 34465, third column, amendatory language item "b" and the amendment to § 763.71 is removed.

2. In the same issue of the Federal Register, the same document, on page 34466, in the first column, amendatory language item "d" and the amendment to § 763.119(a) is removed.

List of Subjects in 40 CFR Part 763

Administrative practice and procedure, Asbestos, Confidential Business Information, Environmental protection, Hazardous substances, imports, Intergovernmental relations, labeling, Occupational safety and health, Reporting and recordkeeping requirements, Schools.

Dated: November 13, 1995.
 Charles M. Auer,
 Director, Chemical Control Division, Office of Pollution Prevention and Toxics.
 [FR Doc. 95-29736 Filed 12-5-95; 8:45 am]
 BILLING CODE 6560-50-F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301-11

[FTR Amendment 45]
 RIN 3090-AF88

Federal Travel Regulation; Increase in the Maximum Travel Expense Amount Which May Be Claimed Without Requirement for a Supporting Receipt

AGENCY: Federal Supply Service, GSA.
ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to increase to \$75 the maximum travel expense amount which may be claimed without requirement that a supporting receipt be attached to the travel voucher. This rule reflects an Internal Revenue Service (IRS) change, effective October 1, 1995, to receipt requirements

for Federal income tax purposes. This amendment is intended to reduce agency administrative costs by decreasing the number of receipts that must be attached to the travel voucher and reviewed.

EFFECTIVE DATE: This final rule is effective October 1, 1995, and applies for travel (including travel incident to a change of official station) performed on or after October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson, Transportation Management Division (FBX), Washington, DC 20406, telephone 703-305-5745.

SUPPLEMENTARY INFORMATION: This final rule increases from \$25 to \$75 the maximum travel expense amount which may be claimed without requirement for a supporting receipt to accompany the travel voucher. Temporary Treasury Regulation (Treas. Reg.) § 1.274-5T(c)(2)(iii), as in effect prior to October 1, 1995, required a taxpayer to substantiate a travel expense deduction by maintaining documentary evidence for (a) any lodging expenditure, or (b) any other expenditure of \$25 or more. On October 16, 1995, the Internal Revenue Service (IRS) issued Notice 95-50, 1995-42 I.R.B. 8 stating that IRS will amend Treas. Reg. § 1.274-5T(c)(2)(iii), effective October 1, 1995, to increase the minimum amount for "other expenditures" from \$25 to \$75. This FTR amendment reflects the IRS receipts requirement change. The FTR requirement for a receipt regardless of amount for the expense items listed in FTR § 301-11.3(c) (1) through (18) remains unchanged.

The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the **FEDERAL REGISTER** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 301-11

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 301-11 is amended to read as follows:

PART 301-11—CLAIMS FOR REIMBURSEMENT

1. The authority citation for part 301-11 continues to read as follows:

Authority: 5 U.S.C. 5701-5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 301-11.3 [Amended]

2. Section 301-11.3 is amended by removing the amount "\$25" where it appears in paragraph (c), and by adding in its place, the amount "\$75".

Dated: November 2, 1995.
 Thurman M. Davis, Sr.,
Acting Administrator of General Services.
 [FR Doc. 95-29665 Filed 12-5-95; 8:45 am]
 BILLING CODE 6820-24-F

**FEDERAL EMERGENCY
 MANAGEMENT AGENCY**

44 CFR Part 65

**Changes in Flood Elevation
 Determinations**

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that

publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part

10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa (FEMA Docket No. 7147).	City of Phoenix	June 22, 1995, June 29, 1995, Arizona Republic.	The Honorable Skip Rimsza, Mayor, city of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003-1611.	May 26, 1995.	040051

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa (FEMA Docket No. 7156).	City of Phoenix	June 15, 1995, June 22, 1995, Arizona Republic.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003-1611.	May 26, 1995.	040051
Arizona: Pima (FEMA Docket No. 7152).	Unincorporated areas.	July 7, 1995, July 14, 1995, Tucson Citizen.	The Honorable Paul Marsh, Chairman, Pima County Board of Supervisors, 130 West Congress Street, Tucson, Arizona 85701.	June 14, 1995.	040073
California: Solano (FEMA Docket No. 7147).	City of Fairfield	June 7, 1995, June 14, 1995, Daily Republic.	The Honorable Chuck Hammond, Mayor, City of Fairfield, 1000 Webster Street, Fairfield, California 94533-4833.	May 18, 1995.	060370
California: Contra Costa (FEMA Docket No. 7147).	City of Hercules	June 1, 1995, June 8, 1995, West County Times.	The Honorable Beth Barkey, Mayor, City of Hercules, 111 Civic Center Drive, Hercules, California 94547.	May 16, 1995.	060434
California: Alameda (FEMA Docket No. 7152).	City of Livermore	July 13, 1995, July 20, 1995, Tri-Valley Herald.	The Honorable Cathie Brown, Mayor, City of Livermore, 1052 South Livermore Avenue, Livermore, California 94550-4900.	June 19, 1995.	060008
California: Los Angeles (FEMA Docket No. 7147).	Unincorporated areas.	June 1, 1995, June 8, 1995, Daily Commerce.	The Honorable Yvonne Brath Waite Burke, Chairperson, Los Angeles County Board of Supervisory, 500 West Temple Street, Suite 822, Los Angeles, California 90012.	May 8, 1995	065043
California: Riverside (FEMA Docket No. 7147).	Unincorporated areas.	June 1, 1995, June 8, 1995, Press Enterprise.	The Honorable Kay Cenicerros, Chairperson, Riverside County Board of Supervisors, P.O. Box 1359, Riverside, California 92502-1359.	May 16, 1995.	060245
California: Santa Barbara (FEMA Docket No. 7144).	Unincorporated areas.	May 17, 1995, May 24, 1995, Santa Barbara News Press.	The Honorable Tim Staffel, Chairperson, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Fourth Floor, Santa Barbara, California 93101.	April 21, 1995.	060331
California: Santa Barbara (FEMA Docket No. 7144).	City of Santa Maria .	May 17, 1995, May 24, 1995, Santa Maria Times.	The Honorable Roger G. bunch, Mayor, City of Santa Maria, 110 east Cook Street, Santa Maria, California 93454.	April 21, 1995.	060336
California: Solano (FEMA Docket No. 7147).	Unincorporated areas.	June 7, 1995, June 14, 1995, Daily Republic.	The Honorable Barbara Kondylis, Chairperson, Solano County, Board of Supervisors, 580 Texas Street, Fairfield, California 94533-6378.	May 18, 1995.	060631
Colorado: Arapahoe (FEMA Docket No. 7152).	Unincorporated areas.	July 13, 1995, July 20, 1995, The Villager.	The Honorable Thomas R. Eggert, Chairperson, Arapahoe County, Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166.	June 20, 1995.	080011
Colorado: Boulder (FEMA Docket No. 7147).	Unincorporated areas.	June 15, 1995, June 22, 1995, Daily Camera.	The Honorable Homer Page, Chairperson, Boulder County Board of Commissioners, P.O. Box 471, Boulder, Colorado 80306.	May 22, 1995.	080023
Colorado: Boulder (FEMA Docket No. 7147).	City of Boulder	June 23, 1995, June 30, 1995, Daily Camera.	The Honorable Leslie Durgin, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306.	June 5, 1995	080024
Colorado: Boulder (FEMA Docket No. 7152).	City of Boulder	July 13, 1995, July 20, 1995, Daily Camera.	The Honorable Leslie Durgin, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306.	June 14, 1995.	080024
Missouri: Boone (FEMA Docket No. 7147).	City of Columbia	June 22, 1995, June 29, 1995, Columbia Missourian.	The Honorable MaryAnne McCollum, Mayor, City of Columbia, P.O. Box N, Columbia, Missouri 65205.	June 6, 1995	290036
New Mexico: Bernalillo (FEMA Docket No. 7144).	City of Albuquerque	May 24, 1995, May 31, 1995, Albuquerque Journal.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	May 4, 1995	350002
New Mexico: Bernalillo (FEMA Docket No. 7152).	City of Albuquerque	July 18, 1995, July 25, 1995, Albuquerque Journal.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	June 23, 1995.	350002
Oklahoma: Comanche (FEMA Docket No. 7144).	City of Lawton	May 24, 1995, May 31, 1995, Lawton Constitution.	The Honorable John T. Marley, Mayor, City of Lawton, 103 Southwest Fourth Street, Lawton, Oklahoma 73501.	April 26, 1995.	400049
Texas: Collin (FEMA Docket No. 7144).	City of Allen	May 24, 1995, May 31, 1995, McKinney Courier Gazette.	The Honorable Joe Farmer, Mayor, city of Allen, One Butler Circle, Allen, Texas 75002-2773.	April 26, 1995.	480131

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Collin (FEMA Docket No. 7147).	Unincorporated areas.	June 14, 1995, June 21, 1995, Plano Star Courier.	The Honorable Ron Harris, Collin County Judge, 210 South McDonald Street, McKinney, Texas 75069.	May 30, 1995.	480130
Texas: Dallas (FEMA Docket No. 7152).	City of Dallas	July 13, 1995, July 20, 1995, Dallas Morning News.	The Honorable Steve Bartlett, Mayor, City of Dallas, 1500 Marilla Street, Room 5E North, Dallas, Texas 75201.	June 14, 1995.	480171
Texas: Denton (FEMA Docket No. 7147).	City of Denton	June 22, 1995, June 29, 1995, Denton Record Chronicle.	The Honorable Bob Castlebury, Mayor, City of Denton, 215 East McKinney, Denton, Texas 76201.	May 31, 1995.	480194
Texas: El Paso (FEMA Docket No. 7152).	City of El Paso	July 14, 1995, July 21, 1995, El Paso Times.	The Honorable Larry Francis, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901-1196.	June 16, 1995.	480214
Texas: Collin (FEMA Docket No. 7147).	City of Plano	June 14, 1995, June 21, 1995, Plano Star Courier.	The Honorable James N. Mums, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086-0358.	May 30, 1995.	480140

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: November 29, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95-29710 Filed 12-5-95; 8:45 am]

BILLING CODE 6718-04-P

44 CFR Part 65

[Docket No. FEMA-7162]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each

community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact

stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Ventura	City of Camarillo	October 27, 1995, November 3, 1995, Camarillo Star.	The Honorable Michael Morgan, Mayor, City of Camarillo, P.O. Box 248, Camarillo, California 93011.	September 26, 1995.	065020
California: Fresno	City of Clovis	October 10, 1995, October 17, 1995, Fresno Bee.	The Honorable Harry Armstrong, Mayor, City of Clovis, 1033 Fifth Street, Clovis, California 93612.	September 20, 1995.	060044
California: Fresno	City of Fresno	October 10, 1995, October 17, 1995, Fresno Bee.	The Honorable Jim Patterson, Mayor, City of Fresno, 2600 Fresno Street, Fresno, California 93721-3604.	September 20, 1995.	060048
California: Fresno	Unincorporated areas.	October 10, 1995, October 17, 1995, Fresno Bee.	The Honorable Sharon Levy, Chairman, Fresno County Board of Supervisors, 2281 Tulare Street, Hall of Records, Room 301, Fresno, California 93721-2198.	September 20, 1995.	065029
California: Santa Clara	City of Saratoga	October 25, 1995, November 1, 1995, Saratoga News.	The Honorable Anne Marie Burger, Mayor, City of Saratoga, 13777 Fruitvale Avenue, Saratoga, California 95070.	October 6, 1995.	060351
California: Ventura	Unincorporated areas.	October 27, 1995, November 3, 1995, Ventura County Star.	The Honorable Mike Kildee, Chairperson, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.	September 26, 1995.	060413
Colorado: Adams, Arapahoe, and Douglas.	City of Aurora	October 25, 1995, November 1, 1995, The Aurora Sentinel.	The Honorable Paul E. Tauer, Mayor, City of Aurora, 1470 South Havana Street, Aurora, Colorado 80012.	October 11, 1995.	080002
Louisiana: Rapides Parish.	Rapides Parish	October 12, 1995, October 19, 1995, Alexandria Daily Town Talk.	The Honorable Myron K. Lawson, President, Rapides Parish Police Jury, P.O. Box 1150, Alexandria, Louisiana 71309-1150.	September 20, 1995.	220145
Nebraska: Douglas	City of Omaha	October 11, 1995, October 18, 1995, Omaha World Herald.	The Honorable Hal Daub, Mayor, City of Omaha, City Hall, 1819 Farnam Street, Suite 300, Omaha, Nebraska 68183.	September 14, 1995.	315274
Oregon: Jefferson	City of Culver	October 4, 1995, October 11, 1995, Madras Pioneer.	The Honorable Joanne G. Heare, Mayor, City of Culver, P.O. Box 256, Culver, Oregon 97734.	September 6, 1995.	410290
Oregon: Marion and Polk.	City of Salem	October 26, 1995, November 2, 1995, Statesman Journal.	The Honorable Roger Gertenrich, Mayor, City of Salem, City Hall, 555 Liberty Street Southeast, Salem, Oregon 97301-3503.	October 6, 1995.	410167
Texas: Tarrant	City of Arlington	October 19, 1995, October 26, 1995, Fort Worth Star Telegram.	The Honorable Richard Greene, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004-0231.	September 27, 1995.	485454
Texas: Coryell	City of Copperas Cove.	October 12, 1995, October 19, 1995, Killeen Daily Herald.	The Honorable J.A. Darosett, Mayor, City of Copperas Cove, P.O. Drawer 1449, Copperas Cove, Texas 76522.	September 19, 1995.	480155
Texas: El Paso	City of El Paso	October 19, 1995, October 26, 1995, El Paso Times.	The Honorable Larry Francis, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901-1196.	September 15, 1995.	480214
Texas: Bexar	City of Fair Oaks Ranch.	October 18, 1995, October 25, 1995, Hill County Recorder.	The Honorable E.L. Gaubatz, Mayor, City of Fair Oaks Ranch, 7286 Dietz Elkhorn, Fair Oaks Ranch, Texas 78015.	September 13, 1995.	481644
Texas: Collin	City of Plano	October 19, 1995, October 26, 1995, Dallas Morning News.	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086-0358.	September 27, 1995.	480140

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Collin	City of Plano	November 23, 1995, November 30, 1995, Plano Star Courier.	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086-0358.	October 27, 1995.	480140
Texas: Tom Green	City of San Angelo ..	October 20, 1995, October 27, 1995, San Angelo Standard Times.	The Honorable Dick Funk, Mayor, City of San Angelo, P.O. Box 1751, San Angelo, Texas 76902-1751.	September 27, 1995.	480623

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: November 29, 1995.

Richard T. Moore,

Associate Director for Mitigation.

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44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base

flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of

September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
CALIFORNIA	
Grande Terrace (City), San Bernardino County (FEMA Docket No. 7145)	
<i>Santa Ana River:</i>	
At Atchison, Topeka, and Santa Fe Railroad Bridge	*913
Approximately 200 feet upstream of Atchison, Topeka, and Santa Fe Railroad Bridge	*920
Approximately 50 feet upstream of Southern Pacific Railroad Bridge	*922
Maps are available for inspection at City Hall, City of Grande Terrace, 22795 Barton Road, Grande Terrace, California.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Loma Linda (City), San Bernardino County (FEMA Docket No. 7145)		100 feet southwest of intersection of Base Line Road and Adobe Road	#1	Maps are available for inspection at City Hall, City of Victorville, 14343 Civic Drive, Victorville, California.	
<i>San Timoteo Creek:</i>		<i>Basins 6 and 7:</i>		COLORADO	
Approximately 400 feet upstream of California Street	*1,210	1,500 feet south of intersection of Rocky Road and Desert Knoll Avenue	#1	Denver (City), Denver County (FEMA Docket No. 7132)	
Approximately 1,222 feet upstream of California Street	*1,222	<i>Basins 8-11:</i>		<i>Sand Creek:</i>	
Maps are available for inspection at City Hall, City of Loma Linda, 25541 Barton Road, Loma Linda, California.		2,000 feet south and 100 feet west of the intersection of Rocky Road and Utah Trail	#1	Just downstream of Interstate Highway 70	*5,236
San Bernardino (City), San Bernardino County (FEMA Docket No. 7145)		Maps are available for inspection at San Bernardino County Department of Public Works, 385 North Arrowhead Avenue, San Bernardino, California.		Approximately 0.5 mile upstream of Interstate Highway 70	*5,249
<i>San Timoteo Wash A:</i>		Trinity County (Unincorporated Areas) (FEMA Docket No. 7122)		Approximately 500 feet upstream of Smith Road	*5,263
At Hunts Lane	*994	<i>Trinity River:</i>		Approximately 500 feet downstream of Havana Street	*5,284
At Waterman Avenue	*1,018	At confluence with Coffee Creek	*2,426	Approximately 4,000 feet upstream of Havana Street	*5,298
At divergence from San Timoteo Creek (approximately at Artesia Street)	*1,038	Approximately 3,000 feet upstream of confluence of Coffee Creek	*2,441	<i>Sand Creek Overflow:</i>	
<i>Warm Creek:</i>		Approximately 7,250 feet upstream of confluence of Coffee Creek	*2,467	At confluence with Sand Creek	*5,239
Approximately 700 feet upstream of Sterling Avenue	*1,110	<i>Coffee Creek:</i>		Approximately 2,150 feet above confluence with Sand Creek	*5,245
Approximately 1,000 feet upstream of Sterling Avenue	*1,112	At confluence with Trinity River	*2,426	Approximately 3,800 feet above confluence with Sand Creek	*5,246
Maps are available for inspection at City Hall, City of San Bernardino, 300 North D Street, San Bernardino, California.		Just upstream of Route 3	*2,488	Approximately 380 feet downstream of Taxiway Road	*5,251
San Bernardino County (Unincorporated Areas) (FEMA Docket No. 7145)		Approximately 5,750 feet upstream of Route 3	*2,556	Approximately 950 feet upstream of Taxiway Road	*5,253
<i>Little Sand Creek:</i>		<i>Middle Weaver Creek:</i>		Approximately 2,050 feet upstream of Taxiway Road	*5,263
Just upstream of North Sterling Avenue	*1,272	At confluence of Ten Cent Gulch ...	*2,004	Approximately 1,550 feet downstream of the divergence from Sand Creek	*5,264
20 feet upstream of East Lynwood Avenue	*1,292	Just upstream of Oregon Street	*2,018	Approximately 1,150 feet downstream of the divergence from Sand Creek	*5,267
<i>Reche Canyon Channel:</i>		Just upstream of Forest Avenue	*2,031	At the divergence from Sand Creek	*5,272
Approximately 2,100 feet upstream of Barton Road	*1,078	<i>West Weaver Creek:</i>		Maps are available for inspection at the City of Denver, Department of Public Works, Wastewater Management Division, 2000 West Third Avenue, Denver, Colorado.	
At Pepper Tree Lane	*1,156	At mouth	*1,960	Oregon	
50 feet downstream of Fern Street	*1,210	Approximately 900 feet upstream of mouth	*1,977	La Grande (City), Union County (FEMA Docket No. 7146).	
140 feet upstream of Mobile Home Road	*1,246	<i>East Weaver Creek:</i>		<i>Taylor Creek:</i>	
300 feet upstream of Mobile Home Road	#3	At mouth	*1,950	At Gekeler Lane	*2,763
Approximately 325 feet upstream of Tidewell Driveway	#3	Approximately 2,200 feet upstream of mouth	*2,002	At Gemini Drive	*2,801
Approximately 500 feet upstream of Tidewell Driveway	*1,304	<i>Garden Gulch:</i>		At Linda Lane	*2,819
At San Bernardino County Boundary	*1,330	At mouth	*2,031	Just downstream of Jupiter Way	*2,828
<i>Santa Ana River:</i>		Just upstream of Highway 299	*2,043	At Highland Drive	*2,879
Approximately 600 feet downstream of La Cadena Drive	*908	Just upstream of Easter Avenue	*2,072	At confluence with East-West Diversion Channel	*2,934
At Atchison, Topeka, and Santa Fe Railroad Bridge	*913	Approximately 2,400 feet upstream of Easter Avenue	*2,122	Approximately 210 feet upstream of confluence with East-West Diversion Channel	*2,956
<i>Twentynine Palms Channel:</i>		<i>Sidney Gulch:</i>		<i>Irrigation Ditch:</i>	
Approximately 400 feet downstream of Bullion Mountain Road	*1,725	At mouth	*2,031	Just upstream of confluence with Taylor Creek	*2,763
Approximately 200 feet upstream of Bullion Mountain Road	*1,728	Just upstream of Highway 299	*2,051	Approximately 1,000 feet upstream of confluence with Taylor Creek .	*2,780
Alluvial Fan Flooding		Just upstream of Memorial Road ...	*2,070	At divergence from Taylor Creek ...	*2,792
<i>Basin 1:</i>		Approximately 1,300 feet upstream of Memorial Road	*2,088	<i>Taylor Creek Overflow:</i>	
300 feet southeast of intersection of Base Line Road and Encelia Avenue	#1	<i>Hayfork Creek:</i>		Approximately 550 feet downstream of Scorpio Drive	*2,781
<i>Basin 2 (Smoke Tree Wash):</i>		At confluence with Salt Creek	*2,294	At Scorpio Drive	*2,800
100 feet south of Base Line Road along Smoke Tree Wash	#1	Just upstream of Highway 3	*2,311	At Gemini Drive	*2,808
<i>Basin 3:</i>		Just upstream of Bridge Street	*2,336	<i>East-West Diversion Channel:</i>	
1,400 feet south of intersection of Foothill Drive and Springs Road .	#1	<i>Kellogg Gulch:</i>		At confluence with Little Taylor Creek	*2,894
<i>Basin 5 (Joshua Mountain Wash):</i>		At mouth	*2,317	Approximately 400 feet upstream of confluence with Little Taylor Creek	*2,911
		Just downstream of Highway 3	*2,321	At divergence from Taylor Creek ...	*2,934
		<i>Carter Gulch:</i>		<i>Little Taylor Creek:</i>	
		At mouth	*2,319		
		Just downstream of Highway 3	*2,319		
		<i>Ewing Gulch:</i>			
		At mouth	*2,321		
		Just upstream of Highway 3	*2,335		
		Maps are available for inspection at the Trinity County Courthouse, Board of Supervisors Office, 101 Court Street, Weaverville, California.			
		Victorville (City), San Bernardino County (FEMA Docket No. 7145)			
		<i>Mojave River:</i>			
		200 feet downstream of Unnamed Wash	*2,640		

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).	Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
At confluence with Taylor Creek	*2,802	Approximately 150 feet downstream of Sheridan Lake Drive ...	*3,281
Just upstream of Linda Lane	*2,822	Approximately 250 feet upstream of Jackson Boulevard	*3,314
At Jupiter Way	*2,831	Approximately 550 feet downstream of Park Drive	*3,340
Approximately 500 feet upstream of Jupiter Way	*2,846	Approximately 1,700 feet upstream of confluence of Rapid Creek with Red Rock Canyon	*3,386
Approximately 350 feet downstream of East-West Diversion Channel	*2,865	Maps are available for inspection at Rapid City Engineering Division, 300 Sixth Street, Rapid City, South Dakota.	
At confluence with East-West Diversion Channel	*2,894		
Approximately 50 feet downstream of corporate limits	*2,927		
Maps are available for inspection at La Grande Planning Department, City Hall, 1000 Adams Avenue, La Grande, Oregon.			
TEXAS			
Terrell (City), Kaufman County (FEMA Docket No. 7145)			
<i>Kings Creek:</i>			
Approximately 150 feet downstream of State Highway 34 (South Crossing)	*2,766	Approximately 500 feet upstream of State Highway 34 (South Crossing)	*439
Approximately 750 feet upstream of the downstream corporate limit ...	*2,790	At Interstate Highway 20 east-bound lanes	*443
At the upstream corporate limit (approximately 4,120 feet upstream of Gekeler Lane)	*2,957	At Airport Road	*445
Approximately 4,320 feet upstream of Gekeler Lane	*2,970	At College Mound Road	*451
Approximately 4,770 feet upstream of Gekeler Lane	*3,000	At East College Street	*458
Approximately 4,930 feet upstream of Gekeler Lane	*3,030	Just upstream of Abandoned Railroad	*468
Approximately 5,165 feet upstream of Gekeler Lane	*3,080	Maps are available for inspection at 201 East Nash, Terrell, Texas.	*478
Approximately 5,255 feet upstream of Gekeler Lane	*3,100	(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")	
Approximately 5,380 feet upstream of Gekeler Lane	*3,120	Dated: November 29, 1995.	
Approximately 5,440 feet upstream of Gekeler Lane	*3,126	Richard T. Moore,	
Maps are available for inspection at the Union County Planning Department, 1108 K Avenue, La Grande, Oregon.		<i>Associate Director for Mitigation.</i>	
		[FR Doc. 95-29708 Filed 12-5-95; 8:45 am]	
		BILLING CODE 6718-04-P	
DEPARTMENT OF COMMERCE			
National Oceanic and Atmospheric Administration			
50 CFR Parts 611, 675, 676, and 677			
[Docket No. 951128281-5281-01; I.D. 112195D]			
Groundfish Fishery of the Bering Sea and Aleutian Islands; Limited Access; Foreign Fishing; Interim 1996 Harvest Specifications			
AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.			
ACTION: Interim 1996 harvest specifications for groundfish, associated management measures, and closures.			
SUMMARY: NMFS issues interim 1996 total allowable catch (TAC) amounts for each category of groundfish, pollock Community Development Quota (CDQ)			

amounts, and specifications for prohibited species bycatch allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is closing certain fisheries as specified in the interim 1996 groundfish specifications. The intended effect is to conserve and manage the groundfish resources in the BSAI. **EFFECTIVE DATE:** 0001 hours, Alaska local time (A.L.t.), January 1, 1996, until the effective date of the Final 1996 Initial Harvest Specifications for Groundfish, which will be published in the Federal Register.

ADDRESSES: The preliminary 1996 Stock Assessment and Fishery Evaluation (SAFE) Report, dated September 1995, is available from the North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501-2252, 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone of the BSAI are managed by NMFS according to the Fishery Management Plan for Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fisheries at 50 CFR parts 675, 676, and 677. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620.

The Council met September 27 through October 2, 1995, to review scientific information concerning groundfish stocks. The Council adopted for public review, the preliminary SAFE Report for the 1996 BSAI groundfish fisheries. The preliminary SAFE Report, dated September 1995, provides an update on the status of stocks. Copies of the SAFE Report are available from the Council (see **ADDRESSES**). The preliminary TAC amounts for each species are based on the best available biological and socioeconomic information. The Council recommended preliminary total TAC amounts of 2,000,000 metric tons (mt) and preliminary total acceptable biological catch (ABC) amounts of 2,929,885 mt for the 1996 fishing year.

Under § 675.20(a)(7), NMFS is publishing in the Proposed Rules section of this issue of the Federal

Register for review and comment proposed initial harvest specifications for groundfish and associated management measures in the BSAI for the 1996 fishing year. The proposed initial specification document contains detailed information on the 1996 specification process and provides a discussion of the preliminary ABC amounts, proposed establishment of the 1996 annual TAC and initial TAC (ITAC) amounts for each target species and apportionments thereof among domestic annual processing (DAP), joint venture processing (JVP), total allowable level of foreign fishing (TALFF), apportionments of each TAC amount, as applicable, prohibited species catch (PSC) allowances under § 675.21(b), and seasonal allowances of pollock and Pacific cod TAC, as applicable.

Regulations at § 675.20(a)(7)(i) require that one-fourth of each proposed ITAC amount and apportionment thereof, one-fourth of each PSC allowance established under § 675.21(b), and the first seasonal allowances of pollock TAC and pollock CDQ become effective 0001 hours, A.l.t., January 1, on an interim basis and remain in effect until superseded by the final harvest specifications, which will be published in the Federal Register.

This action provides interim specifications and apportionments thereof for the 1996 fishing year that will become available on January 1, 1996, on an interim basis. Background information concerning the 1996 groundfish harvest specification process upon which this interim action is based is provided in the proposed initial specifications appearing in the Proposed Rules section of this Federal Register issue.

Species TAC amounts are apportioned initially among DAP, JVP, TALFF, and reserves under §§ 611.93(b)(2) and 675.20(a)(2). DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. JVP

amounts are intended for joint ventures in which U.S. fishermen deliver their catches to foreign processors at sea. TALFF amounts are intended for harvest by foreign fishermen. Existing harvesting and processing capacity allows the U.S. industry to utilize the entire 1996 TAC specified for BSAI groundfish. Therefore, the Council recommended that DAP equal TAC for each species category, which results in no proposed amounts of TALFF or JVP for the 1996 fishing year.

As required by § 675.20(a)(3) and (a)(7)(i), each species' TAC amount initially is reduced by 15 percent, except the hook-and-line and pot gear allocations for sablefish. The sum of these 15-percent amounts is the reserve and may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing. One half of the pollock TAC placed in the reserve is designated as a CDQ reserve for use by CDQ participants. The ITAC amount for each species, except the hook-and-line and pot gear allocations for sablefish, is the remainder of the TAC amount after subtraction of the applicable reserve amount(s). One-fourth of the preliminary ITAC amount and apportionment thereof for each target species will be available on January 1, 1996. However, the first seasonal allowances of pollock TAC and pollock CDQ will be available on January 1, in lieu of the one-fourth interim allocation.

Amendment 18 to the FMP and Amendment 23 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) established inshore and offshore component allocations of pollock in the BSAI and inshore and offshore component allocations of pollock and Pacific cod in the GOA during the years 1993 through 1995. Because Amendments 18 and 23 and their implementing regulations

expire on December 31, 1995, and because the Council has yet to complete development of its comprehensive plan to address problems caused by the open access nature of the Alaska groundfish fisheries, the Council voted unanimously at its June 1995 meeting to adopt Amendments 38 and 40, which would extend the provisions of the expiring amendments through December 31, 1998. On September 18, 1995, NMFS published a notice of proposed rulemaking in the Federal Register to continue the apportionments between the inshore and offshore components through 1998 (60 FR 48087). On November 28, 1995, NMFS determined that Amendment 38 and Amendment 40 are consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. A final rule is to be issued shortly. Consequently, these interim specifications specify allocations of pollock to inshore and offshore components.

1. Interim 1996 BSAI Groundfish Fishery Specifications

Table 1 provides interim TAC amounts and apportionments thereof, interim TAC allocations of pollock to the inshore and offshore components, first seasonal allowances of pollock TAC and pollock CDQ, an interim sablefish apportionment to trawl gear, and Pacific cod TAC apportionment to gear types. These interim specifications become effective at 0001 hours, A.l.t., January 1, 1996.

Existing regulations at § 675.20(a)(7)(i) do not provide for an interim specification for the sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota management plan. As a result, fishing for CDQ sablefish and sablefish harvested with fixed gear is prohibited until the effective date of the final 1996 BSAI groundfish specifications.

TABLE 1.—INTERIM 1996 TAC AMOUNTS OF GROUND FISH FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA (BSAI), BERING SEA (BS), AND ALEUTIAN ISLANDS (AI).^{1,2} First Seasonal Allowances of Pollock Allocations to the Inshore and Offshore Components. First Seasonal Allowances of Pollock Allocations to the Community Development Quota (CDQ) Program. Allowances of Sablefish to Trawl (TRW) Gear. Allowances of Pacific Cod to Jig Gear, H/L or Pot, or TRW

[Amounts are in metric tons]

Species/component	Area and/or gear type	Interim TAC and CDQ
Pollock: ^{3,4,5}		
Inshore	BS	167,344
Offshore	BS	310,781
Inshore	AI	16,839
Offshore	AI	31,272
Inshore	BogDist	298
Offshore	BogDist	553

TABLE 1.—INTERIM 1996 TAC AMOUNTS OF GROUND FISH FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA (BSAI), BERING SEA (BS), AND ALEUTIAN ISLANDS (AI).^{1,2} First Seasonal Allowances of Pollock Allocations to the Inshore and Offshore Components. First Seasonal Allowances of Pollock Allocations to the Community Development Quota (CDQ) Program. Allowances of Sablefish to Trawl (TRW) Gear. Allowances of Pacific Cod to Jig Gear, H/L or Pot, or TRW—Continued

[Amounts are in metric tons]

Species/component	Area and/or gear type	Interim TAC and CDQ
CDQ	BS	42,188
CDQ	AI	4,245
CDQ	BogDist	75
	Total	573,595
Pacific cod: ⁶	Jig	1,063
	H/L & Pot	23,375
	TRW	28,688
	Total	53,126
Sablefish: ^{7,8}	BS-TRW	170
	BS-H/L & Pot	0
	AI-TRW	117
	AI-H/L & Pot	0
	Total	287
Yellowfin sole	BSAI	40,375
Other flatfish ⁹	BSAI	4,152
Squid	BSAI	213
Arrowtooth flounder	BSAI	2,173
Pacific ocean perch	BS	393
	AI	2,231
	Total	2,624
Flathead sole	BSAI	6,375
Other red rockfish ¹⁰	BS	268
Atka mackerel	Western AI	8,823
	Central AI	2,380
	Eastern AI/BS	5,797
	Total	17,000
Rock sole	BSAI	12,750
Greenland turbot	BS	997
	AI	491
	Total	1,488
Sharpchin/Northern	AI	1,085
Other rockfish ¹¹	BS	70
	AI	147
	Total	217
Shortraker/rougheye	AI	233
Other species ¹²	BSAI	4,250
	BSAI Total Interim TAC	720,211

(Interim TAC amounts have been rounded.)

¹ Amounts apply to the entire Bering Sea and Aleutian Islands management area (BSAI), Bering Sea (BS), or Aleutian Islands (AI), as indicated. With the exception of pollock, and for purposes of these specifications, the BS includes the Bogoslof District (BogDist).

² Zero amounts of groundfish are proposed for Joint Venture Processing and Total Allowable Level of Foreign Fishing and are not shown in this table.

³ After subtraction of reserves, the ITAC amounts of pollock for each subarea or district are divided into roe and non-roe seasonal allowances. (See § 675.20(a)(7)(i).) For the BS subarea, the roe and non-roe seasonal allowances are 45 and 55 percent of the pollock ITAC amounts, respectively. The AI subarea and the Bogoslof District receive 100 percent of their respective ITAC seasonal allowance during the roe-season with the remainder of the respective ITAC seasonal allowance during the non-roe season.

⁴ Inshore and offshore component allocations are 35 and 65 percent of the ITAC amounts, respectively. (See § 675.20(a)(2)(iii).)

⁵One-half of the pollock TAC (7.5 percent of each TAC) is placed in a reserve for each subarea or district to be assigned to the Community Development Quota (CDQ) program. (See § 675.20(a)(3)(ii).) For the BS subarea, the roe and non-roe seasonal allowances are 45 and 55 percent, respectively, of the CDQ pollock reserve. The AI subarea and the Bogoslof District receive 100 percent of their respective CDQ reserve allocations during the roe-season with the remainder of the respective reserve becoming available during the non-roe season.

⁶The TAC amount for Pacific cod, after subtraction of the reserves, is allocated 2 percent to vessels using jig gear, 44 percent to H/L gear, and 54 percent to TRW. (See § 675.20(a)(2)(iv).) Pacific cod TAC seasonal apportionments to vessels using H/L or pot gear are not reflected in the interim TAC amounts.

⁷Sablefish gear allocations are as follows: In the BS subarea, TRW gear is allocated 50 percent of TAC, and H/L and pot gear is allocated 50 percent. In the AI subarea, TRW gear is allocated 25 percent of TAC and H/L and pot gear is allocated 75 percent. (See § 675.24(c)(1).) Fifteen percent of the sablefish TRW gear allocation is placed in the nonspecific reserve. One-fourth of the ITAC amount for TRW gear is in effect January 1 as an interim TAC amount.

⁸The sablefish H/L gear fishery is managed under the Individual Fishing Quota (IFQ) program and subject to regulations contained in subparts B and C of 50 CFR part 676. Annual IFQ amounts are based on the final TAC amount specified for the sablefish H/L gear fishery as contained in the final specifications for groundfish. Twenty percent of the sablefish H/L or pot gear final TAC amount will be reserved for use by Community Development Quota (CDQ) participants. (See § 676.24(b)) Existing regulations at § 675.20(a)(7)(i) do not provide for an interim specification for the CDQ reserve or an interim specification for sablefish managed under the IFQ program. In addition, under § 676.16(c) retention of sablefish caught with fixed gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 1996, IFQ permits and IFQ cards will not be valid prior to the effective date of the 1996 final specifications. Thus, fishing for sablefish with fixed gear is not authorized under these interim specifications. See §§ 676.20 and 676.23(b) for guidance on the annual allocation of IFQ and the sablefish fishing season.

⁹"Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, and yellowfin sole.

¹⁰"Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.

¹¹"Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye.

¹²"Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

2. Interim Allocation of PSC Limits for Crab, Halibut, and Herring

Under § 675.21(a), annual PSC limits are specified for red king crab and *Chionoecetes bairdi* Tanner crab in applicable Bycatch Limitation Zones of the BS subarea, and for Pacific halibut

and Pacific herring throughout the BSAI. Regulations under § 675.21(b) authorize the apportionment of each PSC limit into PSC allowances for specified fishery categories.

Regulations at § 675.20(a)(7)(i) require that one-fourth of each proposed PSC

allowance be made available on an interim basis for harvest at the beginning of the fishing year, until superseded by the final harvest specifications. The interim PSC limits are specified in Table 2 and are in effect on January 1, 1996, at 0001 hours, A.I.t.

TABLE 2.—INTERIM 1996 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES

Trawl fisheries	Zone 1 ¹	Zone 2 ¹	BSAI-wide
Red king crab, number of animals:			
yellowfin sole	12,500		
rcksol/oth.flat/flathead sole ²	27,500		
rockfish	0		
turb/arrow/sab ³	0		
Pacific cod	2,500		
plck/Atka/othr ⁴	7,500		
Total	50,000		
<i>C. bairdi</i> Tanner crab, number of animals:			
yellowfin sole	56,250	381,250	
rcksol/oth.flat/flathead sole	118,750	127,500	
turb/arrow/sabl	0	1,250	
rockfish	0	2,500	
Pacific cod	56,250	65,000	
plck/Atka/othr	18,750	172,500	
Total	250,000	750,000	
Pacific halibut, mortality (mt):			
yellowfin sole			198
rcksol/oth.flat/flathead sole			183
turb/arrow/sabl			0
rockfish			28
Pacific cod			398
plck/Atka/othr			139
Total			946
Pacific herring, mt:			
midwater pollock ⁵			336
yellowfin sole			79
rcksol/oth.flat/flathead sole			0
turb/arrow/sabl			0
rockfish			2
Pacific cod			6
plck/Atka/othr			42

TABLE 2.—INTERIM 1996 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES—Continued

Trawl fisheries	Zone 1 ¹	Zone 2 ¹	BSAI-wide
Total	465
<i>Nontrawl fisheries:</i>			
Pacific halibut, mortality (mt):			
Pacific cod Hook-and-line	181
Other nontrawl ⁶	44
Groundfish pot gear	Exempt
Groundfish jig gear	Exempt
Sablefish hook-and-line	Exempt
Total	225

¹ Refer to § 675.2 for definitions of areas.

² Rock sole and other flatfish fishery category.

³ Greenland turbot, arrowtooth flounder, and sablefish fishery category.

⁴ Pollock, Atka mackerel, and "other species" fishery category.

⁵ Pollock other than midwater pollock, Atka mackerel, and "other species" fishery category.

⁶ Includes hook-and-line sablefish, rockfish, and Greenland turbot.

3. Closures to Directed Fishing

Under § 675.20(a)(8), if the Director, Alaska Region, NMFS (Regional Director), determines that the amount of a target species or "other species" category apportioned to a fishery or, with respect to pollock, to an inshore or offshore component allocation, is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. If the Regional Director establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district. Similarly, under §§ 675.21(c) and 675.21(d), if the Regional Director determines that a fishery category's bycatch allowance of halibut, red king crab, or *C. bairdi* Tanner crab for a specified area has been reached, the Regional Director will prohibit directed fishing for each species in that category in the specified area.

The Regional Director has determined that the interim TAC amounts of pollock in the Bogoslof District, Pacific ocean perch in the Bering Sea and Aleutian Island subareas, shortraker/rougheye rockfish in the Aleutian Islands subarea, other rockfish in the BSAI, and other red rockfish in the Bering Sea will be necessary as incidental catch to support other anticipated groundfish fisheries prior to the time that final specifications for groundfish are in effect for the 1996 fishing year (Table 3). Therefore, NMFS is prohibiting directed fishing for these target species and gear types in the specified area identified in Table 3 to prevent exceeding the interim amounts of groundfish TACs specified in Table 1 of this document.

An interim Zone 1 red king crab bycatch allowance of zero crab is specified for the rockfish trawl fishery, which is defined at § 675.21(b)(1)(iii)(D). Similarly, the interim BSAI halibut bycatch allowance specified for the Greenland turbot/arrowtooth flounder/sablefish trawl fishery category, defined at § 675.21(b)(1)(iii)(C), is 0 mt. The Regional Director has determined, in accordance with §§ 675.21(c)(1)(i) and 675.21(c)(iii), that the interim red king crab bycatch allowance specified for the trawl rockfish fishery in Zone 1 and the interim halibut bycatch allowance specified for the Greenland turbot/arrowtooth flounder/sablefish trawl fishery category has been caught. Therefore, NMFS is prohibiting directed fishing for rockfish in Zone 1 by vessels using trawl gear, and for Greenland turbot, arrowtooth flounder, and sablefish by vessels using trawl gear in the BSAI (Table 3).

The closures listed in Table 3 will be in effect during the period that the 1996 interim specifications for groundfish TAC amounts are in effect beginning at 0001 hours, A.l.t., January 1, 1996, and will remain in effect until superseded by the Final 1996 Initial Harvest Specifications for Groundfish. While these closures are in effect, the maximum retainable bycatch amounts at § 675.20(h) apply at any time during a fishing trip. Additional closures and restrictions may be found in existing regulations at 50 CFR part 675.

TABLE 3.—CLOSURES TO DIRECTED FISHING UNDER 1995 INTERIM TAC AMOUNTS¹

Fishery (All gear)	Closed area ²
Pollock in Bogoslof District	Statistical Area 518.
Pacific ocean perch	Bering Sea.
	Eastern AI. ³
	Central AI.
	Western AI.
	AI.
Shortraker/rougheye rockfish .	BSAI.
Other rockfish ⁴	Bering Sea.
Other red rockfish ⁵	Zone 1.
Rockfish (trawl only)	BSAI.
Greenland turbot/arrowtooth/sablefish (trawl only).	

¹ These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 675.

² Refer to § 675.2 for definitions of areas.

³ "AI" means Aleutian Islands area.

⁴ In the BSAI, "Other rockfish" includes Sebastes and Sebastolobus species except for Pacific ocean perch and the "other red rockfish" species.

⁵ "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.

After consideration of public comments on the Proposed 1996 Initial Specifications for Groundfish and additional scientific information presented at its December 1995 meeting, the Council may recommend other closures to directed fishing. NMFS may implement other closures at the time the Final 1996 Initial Harvest Specifications are implemented or during the 1996 fishing year, as necessary for effective management.

Classification

This action is authorized under 50 CFR 611.93(b), 675.20, and part 676 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 et seq.

Dated: December 1, 1995.

Gary Matlock,

*Program Management Officer, National
Marine Fisheries Service.*

[FR Doc. 95-29721 Filed 12-5-95; 8:45 am]

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Proposed Rules

Federal Register

Vol. 60, No. 234

Wednesday, December 6, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Review of Regulations and Written Policies

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of opportunity for comment.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is conducting a systematic review of each its regulations and written policies. Section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI) requires the federal banking agencies to identify and revise regulations and written policies that may be inefficient, cause unnecessary burden or contain outmoded, duplicative or inconsistent provisions; and to work jointly to make uniform all regulations and policies that implement common statutory or regulatory schemes. As part of this systematic review, the FDIC is seeking public comment to identify ways in which its regulation and written policies can be streamlined and made uniform with the other banking agencies. Comments and suggestions should be as specific as possible, citing the particular part of the regulation or policy statement recommended for revision or rescission, and, if a revision is recommended, stating specifically the revision proposed. The FDIC already has undertaken various measures since the passage of section 303 to streamline its regulations and policies, as well as to work jointly with the other federal banking agencies to make uniform regulations and guidelines implementing common statutory and supervisory policies.

DATES: The FDIC anticipates that many of the reviews will result in the publication of proposals to revise specific regulations and statements of policy, with dates for comments identified at the time of publication.

While comments may be submitted at any time through the due dates identified when those proposals are published, the FDIC urges interested parties to submit comments as soon as possible. Those submitted before the tentatively scheduled completion dates for the reviews, as displayed in the schedule at the end of this document are more likely to be considered during the early stages of the development of recommendations.

ADDRESSES: Written comments should be addressed to the Office of the Executive Secretary, FDIC, 550 17th Street, NW, Washington, D.C. 20429. Comments may be hand delivered to Room F-402, 1776 F Street, N.W., Washington, D.C. 20439, on business days between 8:30 a.m. and 5:00 p.m. Comments may be sent fax to: (202) 898-3838 or by the Internet to: comments@fdic.gov. Comments will be available for inspection at the FDIC's Reading Room, Room 7118, 550 17th Street, N.W., Washington, D.C. between 9:00 a.m. and 4:30 p.m. on business days. All comments should reference CDRI section 303, and identify the regulation or policy statement which they concern.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, Assistant Executive Secretary (Administration), Office of the Executive Secretary, (202) 898-3907; or Judith Bailey, Counsel, Legal Division (202) 898-6955; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires that each federal banking agency shall, consistent with the principles of safety and soundness, statutory law and policy, and the public interest:

(1) Conduct a review of the regulations and written policies of that agency to—

(A) streamline and modify those regulations and policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability;

(B) remove inconsistencies and outmoded and duplicative requirements; and

(C) with respect to regulations prescribed pursuant to section 18(o) of the Federal Deposit Insurance Act (12

U.S.C. 1828(o), (real estate lending standards), consider the impact that such standards have on the availability of credit for small business, residential, and agricultural purposes, and on low- and moderate-income communities;

(2) work jointly with the Federal banking agencies to make uniform all regulations and guidelines implementing common statutory or supervisory policies; and

(3) submit a joint report to Congress at the end of such 2-year period detailing the progress of the agencies in carrying out this subsection.

Thus, there are two parts to the review required by section 303(a). First, the FDIC, like the other federal banking agencies, must review and streamline all its regulations and written policies to improve efficiency, to remove unnecessary costs and burdens, and to eliminate inconsistent, outmoded or duplicative provisions. Second, the FDIC is required to work with the other banking agencies to make uniform those regulations and guidelines that implement common statutory or supervisory policies. The federal banking agencies must report to Congress detailing the progress they have made in both the streamlining and uniformity reviews by September 23, 1996. To date, the FDIC has received some comments and uniformity reviews by September 23, 1996. To date, the FDIC has received some comments and suggestions for regulatory reform from interested parties, but the FDIC would like to encourage wider public involvement.

The FDIC has placed a high priority on regulatory review. In testimony on May 18, 1995 before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Banking and Financial Services of the U.S. House of Representatives, Chairman Helfer stated that the FDIC would test regulations against specific criteria:

(1) Whether the regulations are necessary to ensure a safe and sound banking system, (2) whether the regulations enhance the functioning of the marketplace, or (3) whether the regulations can be justified on strong public grounds related to consumer protection.

The FDIC is devoting considerable resources to regulatory review. The FDIC has assembled staff teams to review each of its regulations and policy statements, and those teams already

have begun this reviews. Further, FDIC staff is coordinating with staff of the other federal banking agencies to review common regulations, written policies and guidelines, with the goal of working toward uniformity. A schedule for reviewing FDIC regulations and policy statements appears at the end of this notice.

The FDIC seeks to impose the least intrusive and least burdensome regulations possible while affording maximum flexibility in implementing its statutory mandates. This approach is evident in recent changes to assessment regulation (12 CFR Part 327) which automate the assessment process and permit insured institutions to take advantage of a more flexible payment schedule, and to the FDIC's regulations on real estate appraisals (12 CFR Part 323), which reduce costs and encourage lending by decreasing the number of loans requiring an appraisal.

This approach is also manifested in the implementation of various provisions of FDICIA in which the FDIC has adopted minimal regulations together with flexible guidelines, such as the audit regulations (12 CFR Part 363), standards for safety and soundness (12 CFR Part 364), and real estate lending standards (12 CFR Part 365). Further, the FDIC is reducing regulatory burden by linking supervision more closely to risk with the risk-based insurance program, whereby well-capitalized and well-managed institutions are charged considerably less for deposit insurance than institutions that are undercapitalized and exhibit weakness.

The FDIC's is mindful that regulatory burden also may be associated with examination and supervisory process, and is therefore investigating and introducing less intrusive examination techniques. The FDIC has reduced total hours per examination by 10% through pre-examination planning doing more of the examination work off-site in FDIC field offices coordinating examinations with state and other federal regulators to eliminate supervisory overlap and to extend the examination cycle when appropriate, and increasing examination efficiency through automation of the examination process. The FDIC is beginning to develop an automated loan review program that will reduce the number of specialized loan reports requested by examiners.

The FDIC is also seeking additional reductions by surveying bankers to determine what the industry feels is burdensome about the examination process; and by investigating the use of Internet to permit electronic submission of applications, and to make available to the public supervisory materials such as

Financial Institution Letters, examination manuals, and the rules and regulations of the FDIC. The FDIC has already established procedures for using the Internet to comment on proposed rules and regulations. Additional regulatory revisions that are complete or well underway include:

- Final revisions to the FDIC's regulations implementing the Community Reinvestment Act (12 CFR Part 345) have been approved by the FDIC Board of Directors and were published on May 4, 1995 (60 FR 22156), providing more objective, performance-based assessment standards that minimize the burden of compliance while improving performance. The revised regulation provides alternative examination methods for different sizes and types of institutions, and emphasizes results rather than paperwork and procedure.

- A notice of proposed rulemaking to streamline and clarify the flood insurance provisions in the FDIC's regulations on "Loans in Areas having Special Flood Hazards" (12 CFR Part 339) was published on October 18, 1995 (60 FR 53962), with comments due December 17, 1995. The proposed changes to this regulation would clarify its terms and standardize recordkeeping and reporting requirements among all insured institutions.

- A notice of proposed rulemaking to simplify the reporting of suspected criminal activity, "Reports of Apparent Crimes" (12 CFR Part 353), was published on September 14, 1995, with a comment period that closed November 13, 1995 (60 FR 47719).

- A notice of proposed rulemaking on revisions to "Disclosure of Information" (12 CFR Part 309) was published on July 6, 1995 (60 FR 35148) with a comment period that closed September 9, 1995. The proposed revisions would make it easier for the public to obtain information from the FDIC.

As it continues with its regulatory review, the FDIC would like to provide an opportunity for the earliest possible participation by consumers, banking industry representatives, and the general public, before notices of proposed rulemaking and proposed revisions to policy statements are published by the FDIC Board as part of a notice-and-comment process. To that end the FDIC is encouraging the public to provide suggestions early in the review cycle to assist in the development of specific regulatory proposals. It is anticipated that, in many cases specific recommendations for modifying the FDIC's regulations and policies will be brought before the FDIC's Board of Directors as a result of the reviews. Those recommendations, if

adopted by the FDIC's Board, will be published as formal proposals for comment. Comments provided at this early stage, however, will permit the formulation of improved proposals for consideration by the FDIC's Board of Directors. The request for comments at this early stage is thus separate from, and in addition to, any future opportunity for comment on specific proposed revisions to individual regulations and policies that may result from the work of the reviewing teams.

- Comments should be submitted on regulations and written policies that are unique to the FDIC as well as those that are in common with the other federal banking agencies.

- Comments should focus on and cite particular provisions or language, and provide particular reasons why such provisions are burdensome, inefficient or outmoded.

- Comments should cite particular provisions or language that should be revised or eliminated and, where possible or appropriate, suggest alternative provisions or language.

- If the implementation of a comment would require modifying the statutes that underlie a regulation or policy, the comment should, if possible, identify the needed statutory change.

Existing FDIC regulations are found in chapter XXII of title 5 and chapter III of title 12 of the Code of Federal Regulations. FDIC Statements of Policy are compiled in 2 FDIC Law, Regulations, Related Acts (FDIC), 5001-5412. As noted above, the FDIC anticipated that many of the reviews will result in the publication of proposals to revise specific regulations and statements of policy, with due dates for comments identified at the time of publication. While comments may be submitted at any time through the due dates identified when those proposals are published, the FDIC urges interested parties to submit comments as soon as possible. Those submitted before the tentatively scheduled completion dates for the reviews, as displayed in the schedule below, are more likely to be considered during the early stages of the development of recommendations. It is hoped that, by providing this schedule, commenters will have the ability to address significant regulatory issues in an orderly and focused fashion. Page numbers in the schedule refer to the location of policy statements in the FDIC's looseleaf service known as FDIC Law, Regulations, Related Acts.

Tentative Schedule for Reviewing Regulations and Statements of Policy of the FDIC Under Section 303(a) of CDRI

FDIC.—TENTATIVE SCHEDULE OF REGULATORY REVIEWS UNDER SECTION 303

Part/page No.	Regulation/statement of policy	Target date
Page No. 5241	Joint Policy Statement on Delayed Availability of Funds	2nd Quarter 1995.
Page No. 5271	Joint Policy Statement on Basic Financial Services	2nd Quarter 1995.
310	Privacy Act Regulations	3rd Quarter 1995.
339	Loans in Areas Having Special Flood Hazards	4th Quarter 1995.
Page No. 5411	Statement of Policy Regarding Treatment of Collateralized Letters of Credit After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver.	4th Quarter 1995.
309	Disclosure of Information	4th Quarter 1995.
307	Notification of Changes of Insured Status	4th Quarter 1995.
308	Rules of Practice and Procedure	4th Quarter 1995.
323	Appraisals	4th Quarter 1995.
324	Agricultural Loan Loss Amortization	4th Quarter 1995.
326	Minimum Security Devices and Procedures and Bank Secrecy Act Compliance	4th Quarter 1995.
328	Advertisement of Membership	4th Quarter 1995.
333	Extension of Corporate Powers	4th Quarter 1995.
335	Securities of Nonmember Insured Banks	4th Quarter 1995.
344	Recordkeeping and Confirmation Requirements for Securities Transactions	4th Quarter 1995.
353	Reports of Apparent Crimes Affecting Insured Nonmember Banks	4th Quarter 1995.
363	Annual Independent Audits and Reporting Requirements	4th Quarter 1995.
Page No. 5061	Offering Circular Requirements for Public Issuance of Bank Securities; Statement of Policy Regarding Use of Offering Circulars in Connection with Public Distribution of Bank Securities.	4th Quarter 1995.
Page No. 5073	Federal Financial Institutions Examination Council Policy Statement—Disclosure of Statutory Enforcement Actions.	4th Quarter 1995.
Page No. 5145	FDIC Statement of Policy; Bank Merger Transactions	4th Quarter 1995.
Page No. 5209	Interagency Policy Statement Regarding Advertising of NOW Accounts	4th Quarter 1995.
Page No. 5225	FDIC Statement of Policy on the Applicability of the Glass-Steagall Act to Securities Activities of Subsidiaries of Insured Nonmember Banks.	4th Quarter 1995.
Page No. 5259	Justice Department Policy on Bank Bribery Prosecution	4th Quarter 1995.
Page No. 5277	Guidelines for Monitoring Bank Secrecy Act Compliance	4th Quarter 1995.
Page No. 5289	Guidelines for Compliance with the Federal Bank Bribery Law	4th Quarter 1995.
Page No. 5305	Interagency Policy on Contingency Planning for Financial Institutions	4th Quarter 1995.
Page No. 5317	FFIEC Supervisory Policy on Large-Scale Integrated Financial Software System (LSIS)	4th Quarter 1995.
Page No. 5321	Risks and Controls in End-User Computing	4th Quarter 1995.
Page No. 5325	Interagency Statement on EDP Service Contracts	4th Quarter 1995.
Page No. 5345	FFIEC EDP Interagency Examination, Scheduling and Distribution Policy	4th Quarter 1995.
Page No. 5371	Policy Statement to Address the Problem of the Use of Large-Value Funds Transfers for Money Laundering.	4th Quarter 1995.
Page No. 5395	Statement of Policy on Alternative Dispute Resolution	4th Quarter 1995.
342	Applications for a Stay or Review of Actions of Bank Clearing Agencies	1st Quarter 1996.
Page No. 5235	FDIC Statement of Policy on Assistance to Operating Insured Depository Institutions	1st Quarter 1996.
304	Forms, Instructions, and Reports	1st Quarter 1996.
Page No. 5039	Time Limits for Filing Reports of Condition	1st Quarter 1996.
343	Insured State Nonmember Banks which are Municipal Securities Dealers	1st Quarter 1996.
Page No. 5029	Insured State Nonmember Banks—Statement of Policy and Guidelines for Investments in “Leeway Securities”.	1st Quarter 1996.
311	Rules Governing Public Observation of Meetings of the Corporation’s Board of Directors	1st Quarter 1996.
329	Interest on Deposits	1st Quarter 1996.
348	Management Official Interlocks	1st Quarter 1996.
Page No. 5053	Changes in Control in Insured Nonmember Banks	1st Quarter 1996.
Page No. 5065	Federal Financial Institutions Examination Council on Behalf of its Constituent Agencies—Joint Notice of Policy Statement on Discrimination.	1st Quarter 1996.
Page No. 5113	FDIC Statement of Policy on Qualified Financial Contracts	1st Quarter 1996.
Page No. 5195	Joint Notice of Adoption of Standard Descriptive Terms to be used in Competitive Factor Reports Prepared Pursuant to the Bank Merger Act (12 U.S.C. 1828(c)).	1st Quarter 1996.
Page No. 5275	Guidelines for Implementing a Policy of Capital Forbearance	1st Quarter 1996.
Page No. 5329	Policy Statement on Encouragement and Preservation of Minority Ownership of Financial Institutions.	1st Quarter 1996.
Page No. 5331	FDIC Statement of Policy Regarding the Payment of State and Local Property Taxes	1st Quarter 1996.
Page No. 5335	Statement of Policy Regarding Treatment of Collateralized Put Obligations After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver.	1st Quarter 1996.
Page No. 5369	Statement Concerning the Responsibilities of Bank Directors and Officers	1st Quarter 1996.
Page No. 5373	Interagency Policy Statement on Documentation for Loans to Small- and Medium-sized Businesses and Farms.	1st Quarter 1996.
Page No. 5377	Statement of Policy Regarding Treatment of Security Interests After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver.	1st Quarter 1996.
Page No. 5381	Statement of Policy on Contracting With Outside Firms	1st Quarter 1996.
Page No. 5387	Interagency Guidance on Accounting for Dispositions of Other Real Estate Owned	1st Quarter 1996.
Page No. 5391	Policy Statement of Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision Concerning Branch Closing Notices and Policies.	1st Quarter 1996.
12 CFR 337.6	Brokered Deposits	1st Quarter 1996.
5 CFR 3201	Supplemental Standards of Conduct for Employees of the FDIC	2nd Quarter 1996.
341	Registration of Securities Transfer Agents	2nd Quarter 1996.

FDIC.—TENTATIVE SCHEDULE OF REGULATORY REVIEWS UNDER SECTION 303—Continued

Part/page No.	Regulation/statement of policy	Target date
Page No. 5175	National Historic Preservation Act of 1966	2nd Quarter 1996.
Page No. 5043	Improper and Illegal Payments by Banks and Bank Holding Companies	2nd Quarter 1996.
337	Unsafe and Unsound Banking Practices	2nd Quarter 1996.
346	Foreign Banks	2nd Quarter 1996.
347	Foreign Activities of Insured State Nonmember Banks	2nd Quarter 1996.
349	Reports and Public Disclosure of Indebtedness of Executive Officers and Principal Shareholders to a State Nonmember Bank and its Correspondent Banks.	2nd Quarter 1996.
360	Receivership Rules	2nd Quarter 1996.
362	Activities and Investments of Insured State Banks	2nd Quarter 1996.
Page No. 5031	Applications, Legal Fees, and Other Expenses	2nd Quarter 1996.
Page No. 5041	Consent to Service of Persons Convicted of Offenses Involving Dishonesty or a Breach of Trust as Directors, Officers or Employees of Insured Banks.	2nd Quarter 1996.
Page No. 5075	Interagency Coordination of Formal Corrective Action by the Federal Bank Regulatory Agencies	2nd Quarter 1996.
Page No. 5077	Interagency Coordination of Bank Holding Company Inspections and Subsidiary Bank Examinations.	2nd Quarter 1996.
Page No. 5079	Uniform Financial Institutions Rating System	2nd Quarter 1996.
Page No. 5081	Uniform Policy for Classification of Consumer Installment Credit Based on Delinquency Status	2nd Quarter 1996.
Page No. 5105	Applications to Establish a Domestic Branch (includes Remote Service Facilities)	2nd Quarter 1996.
Page No. 5125	Applications to Relocate Main Office or Branch (includes Remote Service Facilities)	2nd Quarter 1996.
Page No. 5155	Applications Under Section 19 of the Federal Deposit Insurance Act	2nd Quarter 1996.
Page No. 5185	National Environmental Policy Act of 1969	2nd Quarter 1996.
Page No. 5201	Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies.	2nd Quarter 1996.
Page No. 5217	FDIC Statement of Policy on Retail Repurchase Agreements	2nd Quarter 1996.
Page No. 5237	Statement Regarding Eligibility to Make Application to Become an Insured Bank Under Section 5 of the Federal Deposit Insurance Act.	2nd Quarter 1996.
Page No. 5249	Federal Financial Institutions Examination Council Supervisory Policy—Securities Lending	2nd Quarter 1996.
Page No. 5257	Federal Financial Institutions Examination Council Supervisory Policy—The Sale of U.S. Government Guaranteed Loans and Sale Premiums.	2nd Quarter 1996.
Page No. 5265	Federal Financial Institutions Examination Council Supervisory Policy—Repurchase Agreements of Depository Institutions With Securities Dealers and Others.	2nd Quarter 1996.
Page No. 5299	Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks.	2nd Quarter 1996.
Page No. 5349	Applications for Deposit Insurance	2nd Quarter 1996.
Page No. 5057	Development and Review of FDIC Rules and Regulations	3rd Quarter 1996.
Page No. 5035	Gold	3rd Quarter 1996.
5 CFR 3202	Financial Disclosure Requirements for Employees of the FDIC	3rd Quarter 1996.
303	Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation.	3rd Quarter 1996.
325	Capital Maintenance	3rd Quarter 1996.
Page No. 5067	Statement of Policy Concerning Interest Rate Futures Contracts, Forward Contracts and Standby Contracts.	3rd Quarter 1996.
Page No. 5197	Uniform Guideline on Internal Control for Foreign Exchange Activities in Commercial Banks	3rd Quarter 1996.
Page No. 5293	Supervisory Policy Statement on Securities Activities	3rd Quarter 1996.
Page No. 5327	Statement of Policy Regarding Liability of Commonly Controlled Depository Institutions	3rd Quarter 1996.
327	Assessments	4th Quarter 1996.
338	Fair Housing	4th Quarter 1996.
Page No. 5049	Administrative Enforcement of the Truth in Lending Act—Restitution	4th Quarter 1996.
Page No. 5221	Equal Credit Opportunity and Fair Housing Acts Enforcement Policy Statement	4th Quarter 1996.
Page No. 5303	Federal Financial Institutions Examination Council Statement on the Home Mortgage Disclosure Act.	4th Quarter 1996.
Page No. 5337	FFIEC Policy Statement Prescreening by Financial Institutions and the Fair Credit Reporting Act	4th Quarter 1996.
Page No. 5397	Policy Statement on Discrimination in Lending	4th Quarter 1996.
330	Deposit Insurance Coverage	4th Quarter 1996.
350	Disclosure of Financial and Other Information by FDIC-Insured State Nonmember Banks	4th Quarter 1996.
351	International Operations	4th Quarter 1996.
365	Real Estate Lending Standards	4th Quarter 1996.
Page No. 5045	Income Tax Remittance by Banks to Holding Company Affiliates	4th Quarter 1996.
Page No. 5063	Statement of Policy on Supervision of U.S. Branches and Agencies of Foreign Banks	4th Quarter 1996.
Page No. 5213	Uniform Interagency Consumer Compliance Rating System	4th Quarter 1996.
Page No. 5302.01	Statement of Policy Providing Guidance on External Auditing Procedures for State Nonmember Banks.	4th Quarter 1996.
Page No. 5359	Statement of Policy on Foreclosure Consent and Redemption Rights	4th Quarter 1996.
Page No. 5367	Interagency Policy Statement on Coordination and Communication Between External Auditors and Examiners.	4th Quarter 1996.
Page No. 5165	Policy Statement on Community Reinvestment Act	3rd Quarter 1997.
Page No. 5205	Community Reinvestment Act Information Statement	3rd Quarter 1997.
Page No. 5227	Revised Uniform Interagency Community Reinvestment Act Assessment Rating System	3rd Quarter 1997.
Page No. 5309	Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act.	3rd Quarter 1997.
Page No. 5339	Federal Financial Institutions Examination Council Community Reinvestment Act Policy Statement on Analyses of Geographic Distribution of Lending.	3rd Quarter 1997.

Dated: November 28, 1995.
Federal Deposit Insurance Corporation.
Jerry L. Langley,
Executive Secretary.
[FR Doc. 95-29541 Filed 12-5-95; 8:45 am]
BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R-0892 and
Docket No. R-0893]

Consumer Leasing; Extension of Comment Period

AGENCY: Board of Governors of the
Federal Reserve System.

ACTION: Proposed rule and official staff
interpretation; extension of comment
period.

SUMMARY: On September 20, 1995, the Board published a request for comment on proposed amendments to Regulation M, which implements the Consumer Leasing Act (60 FR 48752). At that time, the Board also proposed revisions to the official staff commentary to Regulation M, which were published in the same issue of the Federal Register (60 FR 48769). The Consumer Leasing Act and Regulation M require lessors to provide uniform cost and other disclosures about consumer lease transactions. The Board's proposal contains several substantive amendments to the regulation and would also simplify and clarify its provisions. In order to obtain additional views on the proposal from individual consumers, the Board has extended the public comment period for 90 days. The comment period for the proposed revisions to the commentary is similarly extended for 90 days.

DATES: Comments must be received by
February 15, 1996.

ADDRESSES: Comments should refer to
Docket No. R-0892 and Docket No. R-
0893, and be mailed to William W.
Wiles, Secretary, Board of Governors of
the Federal Reserve System, 20th Street
and Constitution Avenue NW.,
Washington, DC 20551. Comments also
may be delivered to room B-2222 of the
Eccles Building between 8:45 a.m. and
5:15 p.m. weekdays, or to the guard
station in the Eccles Building courtyard
on 20th Street NW., (between
Constitution Avenue and C Street) any
time. Comments may be inspected in
room MP-500 of the Martin Building
between 9 a.m. and 5 p.m. weekdays,
except as provided in 12 CFR 261.8 of
the Board's rules regarding the
availability of information.

FOR FURTHER INFORMATION CONTACT:
Kyung H. Cho-Miller, Obrea O.
Poindexter, or W. Kurt Schumacher,
Staff Attorneys, Division of Consumer
and Community Affairs, Board of
Governors of the Federal Reserve
System, Washington, DC 20551, at (202)
452-2412 or 452-3667. For users of
Telecommunications Device for the Deaf
(TDD), please contact Dorothea
Thompson at (202) 452-3544.

SUPPLEMENTARY INFORMATION: The
Consumer Leasing Act (CLA), 15 U.S.C.
1667-1667e, was enacted into law in
1976 as an amendment to the Truth in
Lending Act (TILA), 15 U.S.C. 1601 *et*
seq. The Board was given rulewriting
authority, and its Regulation M (12 CFR
part 213) implements the CLA. An
official staff commentary that interprets
the regulation has also been published
(Supplement I-CL-1 to 12 CFR 213).

The CLA generally governs consumer
leases of personal property involving
\$25,000 or less and a term of more than
four months. An automobile lease is the
most common type of consumer lease
covered by the CLA. Like the credit
provisions of the TILA, the CLA
requires lessors to provide uniform cost
and other disclosures in consumer lease
transactions and lease advertising. Prior
to entering into a lease agreement,
lessors must give consumers fifteen to
twenty disclosures, including the
amount of initial charges to be paid, an
identification of leased property, a
payment schedule, the responsibilities
for maintaining the leased property, and
the liability for terminating a lease early.

The Board's Regulatory Planning and
Review Program calls for the periodic
review of Board regulations with four
goals in mind: To clarify and simplify
regulatory language; to determine
whether regulatory amendments are
needed to address technological and
other developments; to reduce undue
regulatory burden on the industry; and
to delete obsolete provisions. On
September 20, 1995, the Board
published proposed revisions to
Regulation M for comment (60 FR
48752). The proposal contains several
substantive revisions to the regulation,
for example: additional disclosure
requirements about early termination
charges, the gross cost of leases, the
residual value, and the estimated lease
charge; a requirement that certain
leasing disclosures be segregated from
other information; and pursuant to a
statutory change, revisions to the
advertising provisions for radio and
television. The proposal also simplifies
the language and format of the
regulation to state the requirements
more clearly.

The Board is extending the comment
period until February 15, 1996, in order
to obtain views on the proposals from
consumers who have experience in
leasing or are interested in leasing, by
inviting certain individuals to
participate in focus groups. The focus
group participants will be asked to
address key elements of the Board's
proposed amendments to Regulation M
and to provide comments on the
proposed consumer leasing forms.

During the extension period, the
Board's staff will undertake its review
and analysis of the comments that have
already been filed. The comment period
is being extended primarily for the
purpose of conducting these focus group
interviews. Other members of the public
may submit comments during this
period, but they are encouraged to
submit them as soon as possible. The
Board does not expect this extension to
delay the implementation of the final
rule. The Board anticipates that
revisions to Regulation M and the
official staff commentary will be
adopted in final form in the second
quarter of 1996.

Board of Governors of the Federal Reserve
System, November 30, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-29697 Filed 12-5-95; 8:45 am]

BILLING CODE 6210-01-P

12 CFR Part 230

[Regulation DD; Docket No. R-0904]

Truth in Savings

AGENCY: Board of Governors of the
Federal Reserve System.

ACTION: Proposed rule; official staff
interpretation.

SUMMARY: The Board is publishing for
comment proposed revisions to the
official staff commentary to Regulation
DD (Truth in Savings). The commentary
applies and interprets the requirements
of Regulation DD. The proposed
revisions would clarify regulatory
provisions or provide further guidance
on issues of general interest, such as
when credited interest becomes part of
principal and how leap years affect the
calculation of the annual percentage
yield.

DATES: Comments must be received on
or before February 2, 1996.

ADDRESSES: Comments should refer to
Docket No. R-0904, and may be mailed
to William W. Wiles, Secretary, Board of
Governors of the Federal Reserve
System, 20th Street and Constitution
Avenue, NW., Washington, DC 20551.

Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Attorney, or Ombra O. Poindexter, or Michael L. Hentrel, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412. For users of Telecommunications Device for the Deaf (TDD) only, please contact Dorothea Thompson, at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Savings Act (12 U.S.C. 4301 *et seq.*) is to assist consumers in comparing deposit accounts offered by depository institutions. The act requires institutions to disclose fees, the interest rate, the annual percentage yield (APY), and other account terms whenever a consumer requests the information and before an account is opened. Fees and other information also must be provided on any periodic statement the institution sends to the consumer. Rules are set forth for deposit account advertisements and advance notices to account holders of adverse changes in terms. The act restricts how institutions must determine the account balance on which interest is calculated. The act is implemented by the Board's Regulation DD (12 CFR part 230). The regulation authorizes the issuance of official staff interpretations of the regulation.

The Board is publishing proposed amendments to the commentary to Regulation DD, which provides guidance to depository institutions in applying the regulation to specific transactions and is a substitute for individual staff interpretations. The commentary is updated periodically to address significant questions that arise. The Board expects to adopt the commentary in final form by April 1996 with a six-month time period for optional compliance and a mandatory compliance date of October 1996.

On January 26, 1995, the Board published a proposal to amend the regulation's rules for calculating the APY (60 FR 5142). The Congress is considering legislation that would

repeal several provisions of the Truth in Savings Act, including those calling for an APY. The Board has deferred action on the proposal, pending the Congress's resolution of the legislative proposals.

II. Proposed Commentary

Section 230.2—Definitions

(2)(f) Bonus

Comment 2(f)-2 provides additional guidance regarding bonuses. The proposed comment clarifies the treatment of coupons. It also codifies guidance provided in the supplementary information accompanying the initial rulemaking (57 FR 43337, published September 21, 1992) concerning items given or offered to third parties.

2(u) Time Account

Proposed comment 2(u)-3 clarifies that an interest-bearing account meets the definition of a time account if the amount of the early withdrawal penalty is equal to at least seven days' interest for withdrawals during the first six days the account is opened and the account has a maturity of at least seven days. Thus, the Board believes that where a depository institution imposes a dollar amount as its early withdrawal penalty (assessed during the first six days an account is opened) on an interest-bearing account, rather than applying a periodic rate to a balance ("interest"), the fixed-dollar penalty is the functional equivalent of interest.

Section 230.7—Payment of Interest

7(b) Crediting and Compounding Policies

Comment 7(b)-4 addresses crediting and compounding policies. The Board believes institutions may choose any crediting frequency. However, once interest is credited by posting interest to an account it becomes part of the principal, and if interest remains in the account, interest must accrue on those funds. The Board believes the act requires that once interest is credited to an account, institutions must calculate interest on the full principal in the account. For example, assume a consumer earns \$5 in interest on a \$1,000 balance for the month of January. If the institution credits interest monthly (in the example, at the end of January) and does not pay the interest by check or transfer to another account, the institution must accrue interest on \$1,005 for the month of February. Comment 7(b)-4 would clarify that interest cannot be credited by posting to a consumer's account without becoming part of the principal.

Appendix A—Annual Percentage Yield Calculation

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

Part II. Annual Percentage Yield Earned for Periodic Statements

Comment app. A.II.A.-2 provides additional guidance on rounding the interest earned figure of the annual percentage yield earned. Proposed comment app. A.II.-3 provides additional guidance on calculating interest and the annual percentage yield earned in a leap year.

III. Form of Comment Letters

Comment letters should refer to Docket No. R-0904, and, when possible, should use a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format, if accompanied by an original document in paper form.

List of Subjects in 12 CFR Part 230

Advertising, Banks, banking, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in savings.

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with new Federal Register publication rules.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 230 as follows:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 would continue to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. In Supplement I to part 230, under Section 230.2 Definitions., the following amendments would be made:

- a. Under *(f) Bonus*, paragraph 1. would be revised, paragraphs 2. through 4. would be redesignated as paragraphs 3. through 5., respectively, and a new paragraph 2. would be added; and
- b. Under *(u) Time account*, a new paragraph 3. would be added.

The revisions and additions would read as follows:

Supplement I to Part 230—Official Staff Interpretations

* * * * *

Section 230.2 Definitions

* * * * *

(f) Bonus.

1. *fi* General Rule *fi* [Examples] Bonuses include items of value, other than interest, offered as incentives to consumers, such as an offer to pay the final installment deposit for a holiday club account. [Items that are not a bonus include discount coupons for goods or services at restaurants or stores.]

fi 2. *Examples of Excluded Items.* Items that are not bonuses include:

i. Discount coupons distributed by institutions for goods or services at restaurants or stores where the consumer must pay a sum to the restaurant or store to receive the benefit of the coupon

ii. Items of value given to a third party by an institution when a consumer opens, maintains, or renews an account—such as donations made to a charitable organization.*fi*

* * * * *

(u) Time account

* * * * *

fi 3. Fee for early withdrawal. Time accounts include interest-bearing accounts with a maturity of at least seven days that impose a dollar amount for withdrawals during the first six days after the account is opened that is equal to at least seven days' interest.*fi*

* * * * *

3. In Supplement I to part 230, under Section 230.7 *Payment of interest*, the following amendments would be made:

a. Under (a)(1) *Permissible methods*, paragraph 4. would be revised; and

b. Under (b) *Compounding and crediting policies*, a new paragraph 4. would be added.

The revisions and additions would read as follows:

* * * * *

Section 230.7 Payment of Interest

* * * * *

(a)(1) *Permissible methods.*

* * * * *

4. *Leap year.* Institutions may apply a daily rate of 1/366 or 1/365 of the interest rate for 366 days in a leap year, if the account will earn interest for February 29. *fi* "Leap year" is a calendar year in which February 29 occurs. For example, if the term of a time account includes days in a nonleap year but extends through February 29 of a leap year, the institution must use a daily rate of 1/365 (or a greater daily rate such as 1/360) each day the account is open in the nonleap year.

* * * * *

(b) *Compounding and crediting policies.*

* * * * *

fi 4. *Crediting and accrual of interest.* Once interest is credited to an account it becomes part of the principal on which an institution must accrue interest.*fi*

* * * * *

4. In Supplement I to part 230, under Appendix A, the following amendments would be made:

a. Under *Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes*, a new paragraph 2. would be added; and

b. Under *Part II. Annual Percentage Yield Earned for Periodic Statements*, under A. *General Formula*, paragraph 2. would be revised, and a new paragraph 3. would be added.

The additions and revisions would read as follows:

* * * * *

Appendix A to Part 230—Annual Percentage Yield Calculation

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

* * * * *

fi 2. *Leap year.* Institutions that use a daily rate of 1/366 to pay interest on an account during a leap year may calculate the annual percentage yield using 365 or 366 days in a leap year, as follows:

i. Institutions may use 365 days in all cases.

ii. For time accounts, institutions must use 365 if the account term includes days in a nonleap year.*fi*

Part II. Annual Percentage Yield Earned for Periodic Statements

* * * * *

A. *General Formula*

* * * * *

2. *Rounding.* The interest earned figure used to calculate the annual percentage yield earned must be rounded to two decimals and reflect the amount actually paid, if at the end of the statement period the institution only accrues interest on two decimals. For example *fi* :fi [, if]

fi i. If *fi* the interest earned for a statement period is \$20.074 and the institution pays the consumer \$20.07, the institution must use \$20.07 (not \$20.074) to calculate the annual percentage yield earned *fi* if the institution does not accrue interest on the \$20.074 if interest is credited to the account, or on the \$.004 if interest is paid by check or transfer to another account for the next statement period.*fi*

fi ii. If an institution accrues interest on the .004 for the next statement period, \$20.074 may be used to calculate the annual percentage yield earned for the statement period.

iii. *fi* For accounts paying interest based on the daily balance method that compound and credit interest quarterly, and send monthly statements, the institution may, but need not, round accrued interest to two decimals for calculating the annual percentage yield earned on the first two monthly statements issued during the quarter. [However, on the quarterly statement the interest earned figure must reflect the amount actually paid].

fi 3. *Leap year.* Institutions that use a daily rate of 1/366 to pay interest on an account

during a leap year may calculate the annual percentage yield earned using 365 or 366 days during the leap year.*fi*

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29712 Filed 12–5–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–41]

Proposed Establishment of Class E Airspace; North Las Vegas Air Terminal, NV.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at North Las Vegas Air Terminal, Las Vegas, NV. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 12 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at North Las Vegas Air Terminal, Las Vegas, NV.

DATES: Comments must be received on or before January 5, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–41, Air Traffic Division, PO Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business at the Office of the Manger, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation

Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310)-725-6533.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interest parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 95-AWP-41." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E airspace area at North

Law Vegas Air Terminal, Las Vegas NV. The development of a GPS SIAP at North Las Vegas Air Terminal has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 12 SIAP at North Las Vegas Air Terminal, Las Vegas, NV. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.09C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AWP NV E5 North Las Vegas Air Terminal, NV [New]

North Las Vegas Air Terminal, NV
(Lat. 36°12'45" N, long. 115°11'49" W).

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the North Las Vegas Air Terminal, excluding that portion within the Las Vegas, NV, Class B airspace area.

* * * * *

Issued in Los Angeles, California, on November 16, 1995.

James H. Snow,

*Acting Manager, Air Traffic Division,
Western-Pacific Region.*

[FR Doc. 95-29351 Filed 12-5-95; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On January 27, 1992, Courtaulds Fibers, Inc. ("Courtaulds") applied to the Federal Trade Commission ("the Commission") requesting establishment of a new generic name and definition for a fiber it manufactures. It recommended "lyocell" be adopted as the new generic name for this fiber. The application was filed pursuant to Rule 8 (16 CFR 303.8) of the Rules and Regulations Under the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.*, and Subpart C of Part 1 of the Commission's Rules of Practice, 16 CFR 1.26. In the application Courtaulds stated that its cellulosic fiber differs in kind and chemical structure from any of the existing fiber definitions of Rule 7 (16 CFR 303.7).

Commission staff, with the assistance of an expert on textiles, after review of Courtauld's application, determined that various tests were necessary in order to evaluate whether lyocell was, in fact, a new generic fiber. Courtaulds performed these tests using the procedures and under the conditions outlined by the textile expert. In March 1995, Courtaulds submitted the results of these tests, as well as other materials relating to its application.

Although the Commission has determined that the proposed new fiber falls within the existing Rule 7(d) (16

CFR 303.7(d)) definition of "rayon," the Commission believes it is in the public interest to amend the Rule to recognize the fiber's unique characteristics.

Rule 7(d) currently defines "rayon" as: a manufactured fiber composed of regenerated cellulose, as well as manufactured fibers composed of regenerated cellulose in which substituents have replaced not more than 15% of the hydrogens of the hydroxyl groups.

Based on its review of the Courtaulds application and related materials, the Commission proposed to retain the current Rule 7(d) definition and to add the following sentence: Where the fiber is composed of cellulose precipitated from an organic solution in which no substitution of the hydroxyl groups takes place and no chemical intermediates are formed, the term *lyocell* may be used as a generic description of the fiber.

The Commission now solicits comments as to whether Rule 7(d) should be amended and, if so, the form of such an amendment.

DATE: Written comments will be accepted until February 5, 1996.

ADDRESS: Comments and other submissions should be directed to: Secretary, Federal Trade Commission, Room H-159, Sixth and Pennsylvania Avenue NW., Washington, DC 20580. Submissions should be identified as "Rule 7(d) Under the Textile Act—Comment."

FOR FURTHER INFORMATION CONTACT: Bret S. Smart, Program Advisor, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Boulevard, #13209, Los Angeles, CA 90024, (310) 235-7890.

SUPPLEMENTARY INFORMATION:

Section A. Background

Rule 6 (16 CFR § 303.6) of the Rules and Regulations Under the Textile Act requires covered persons to use the generic names of the fibers contained in covered textile fiber products when making required disclosures of the fiber content of the products. Rule 7 (16 CFR 303.7) sets forth the generic names and definitions that the Commission has established for manufactured fibers. These generic manufactured fibers have been found by the Commission to be individually unique and distinctive by virtue of their chemical composition and physical properties. Rule 8 (16 CFR 303.8) sets the procedures for establishing new generic names. Upon receipt of an application for a new generic name, the Commission must, within 60 days, either deny the application or assign to the fiber a

numerical or alphabetical symbol for temporary use during further consideration of the application.

Courtaulds submitted its application requesting establishment of "lyocell" as a new generic fiber name on January 27, 1992. After an initial analysis the Commission granted Courtaulds the designation "CF0001" for temporary use in identifying the fiber until the final determination is made as to the disposition of the application. Commission staff, with the assistance of an expert on textiles, determined that various tests were necessary in order to evaluate whether lyocell was, in fact, a new generic fiber. Courtaulds performed these tests using the procedures and under the conditions outlined by the textile expert. In March 1995, Courtaulds submitted the results of these tests, as well as other materials relating to its application. The application and related materials have been placed on the rulemaking record.

The effect of the proposed amendment would be to allow use of the name "lyocell" as an alternative to the generic name "rayon" for the subcategory of rayon fibers meeting the further criteria contained in the sentence added by the proposed amendment. Within the established 21 generic names for manufactured fibers, there are presently two cases where such generic name alternatives may be used. Specifically, pursuant to Rule 7(e) (16 CFR 303.7(e)), within the generic category "acetate," the term "triacetate" may be used as an alternative generic description for a specifically defined subcategory of acetate fiber. And pursuant to Rule 7(j) (16 CFR 303.7(j)), within the generic category "rubber," the term "lastrile" may be used as an alternative generic description for a specifically defined subcategory of rubber fiber.

The Commission takes this opportunity to clarify its policy concerning the criteria by which it will decide the disposition of petitions filed under Rule 8 of the Textile Act Rules, 16 CFR 303.8 (1995). In 1973, at the conclusion of the rulemaking that led to creation of the new generic name "aramid," the Commission declared the following policy for adopting generic fiber names:

[T]he Commission, in the interest of elucidating the grounds on which it has based this decision and shall base future decisions as to the grant of generic names for textile fibers, sets out the following criteria for grant of such generic names.

1. The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result

in distinctive physical properties of significance to the general public.

2. The fiber must be in active commercial use or such use must be immediately foreseen.

3. The grant of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies.

The Commission believes it is in the public interest to prevent the proliferation of generic names, and will adhere to a stringent application of the above-mentioned criteria in consideration of any future applications for generic names and in a systematic review of any generic names previously granted which no longer meet these criteria.

As exemplified by today's action and reflected in this notice, the Commission generally reaffirms its 1973 criteria. In addition, it notes that where appropriate, in considering applications for new generic names for fibers that are of the same general chemical composition as those for which a generic name already has been established, rather than of a chemical composition that is radically different, but that have distinctive properties of importance to the general public as a result of a new method of manufacture or their substantially differentiated physical characteristics, such as their fiber structure, it may allow such fiber to be designated in required information disclosures by either its generic name, or alternatively, by its "subclass" name. The Commission will consider this disposition when the distinctive feature or features of the subclass fiber make it suitable for uses for which other fibers under the established generic name would not be suited or would be significantly less well suited.

The Commission believes that Courtaulds' current application describes a subclass of generic rayon fibers with significant distinctions to consumers resulting from physical characteristics of the fiber and its new mode of manufacture that meet the above standard for allowing designation by the subclass name "lyocell." Courtaulds' application and other documents and materials related to the petition describe the lyocell fiber, its manufacture and possible uses as follows:

Lyocell fiber results from the dissolution of cellulose into an aqueous solution of N-methyl morpholine oxide and the precipitation of the fiber out of solution. This process is unique among methods used to manufacture other existing rayons. As a result, the molecular structure of lyocell fiber is radically different from that of other rayons in that it has a substantially

higher degree of polymerization and greater crystallinity. These differences induce high wet and dry tenacity as well as high initial wet modulus in lyocell fiber. Consequently, garments made from the fiber are highly resistant to shrinkage and wrinkling and therefore do not require drycleaning, unlike other rayons. In addition to its use in apparel, Courtaulds maintains that lyocell may be used to produce biodegradable paper and hydro-entangled nonwoven products since, unlike other rayons, it fibrillates upon beating.

Section B. Invitation to Comment

In today's notice, the Commission is soliciting comments on all aspects of the appropriateness of the proposed amendment to Rule 7(d). Before adopting this proposed amendment, the Commission will give consideration to any written comments and materials submitted to the Secretary of the Commission within the time period stated above. Submissions will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission Regulations on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Room, Room 130, Federal Trade Commission, 6th & Pennsylvania Avenue NW., Washington, DC 20580.

Section C. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis, 5 U.S.C. 603-604, are not applicable to this document because it is believed the amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities. In considering the economic impact of the proposed amendment on manufacturers and retailers, the Commission notes that the amendment will impose no obligations, penalties, or costs. The amendment would simply allow covered companies to use the term "lyocell" as an alternative generic description for "rayon" for a well-defined subcategory of rayon fibers. The amendment would impose no additional labeling requirements nor would it mandate any changes in labeling.

To ensure, however, that no substantial economic impact is being overlooked, public comment is requested on the effect of the proposed amendment on costs, profit, competitiveness, and employment in small entities. Subsequent to the receipt of public comments, the Commission will decide whether the preparation of a final regulatory flexibility analysis is

warranted. Accordingly, based on available information, the Commission hereby certifies, pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 605(b), that the proposed amendment will not have a significant economic impact on a substantial number of small entities. This notice serves as certification to that effect for the purposes of the Small Business Administration.

Section D. Paperwork Reduction Act

This proposed amendment does not constitute a "collection of information" under the Paperwork Reduction Act of 1995, P.L. 104-13, 109 Stat. 163, and the implementing regulation, 5 CFR Part 1320 *et seq.*

The generic name petition request has already been submitted to the OMB and has been assigned a control number, 3084-0047.

List of Subjects in 16 CFR Part 303

Labeling, Textiles, Trade practices.

Authority: Sec. 7(c) of the Textile Fiber Products Identification Act, 15 U.S.C. 7(c); Sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95-28555 Filed 12-5-95; 8:45 am]

BILLING CODE 6750-01-M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960-AE20

Living In The Same Household And The Lump-Sum Death Payment

AGENCY: Social Security Administration.
ACTION: Proposed rules.

SUMMARY: We propose to revise our rules on "living in the same household" (LISH) and the lump-sum death payment (LSDP) to bring them into accord with legislation that restricted the payment of the LSDP. This revision will include the removal from our regulations of several outdated sections and paragraphs. We also propose to incorporate into our rules the policy established previously in a Social Security Ruling (SSR) that interpreted the definition of LISH to allow for extended separations that are based solely on medical reasons.

DATES: To be sure that your comments are considered, we must receive them no later than February 5, 1996.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966-2830, sent by E-mail to "regulations@ssa.gov", or delivered to the Division of Regulations and Rulings, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 A.M. and 4:30 P.M. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-3298 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION:

Background

Prior to passage of the Omnibus Budget Reconciliation Act of 1981, Public Law (Pub. L.) 97-35, the widow(er) of a deceased worker could qualify for the LSDP if he/she had been LISH with the deceased at the time of death or, under certain conditions, if he/she paid the burial expenses of the deceased. Thus, a widow(er) who was not LISH with the deceased could still receive the LSDP if he/she paid the deceased's burial expenses.

Public Law 97-35 redefined who could qualify for the LSDP. Effective September 1, 1981, the LSDP no longer was payable to any individuals, other than those described in Pub. L. 97-35, or to funeral homes.

Under Public Law 97-35, the LSDP is payable to 3 categories of individuals: (1) the surviving spouse of the deceased who was LISH with the deceased at the time of death; (2) a person who is entitled to (or was eligible for) benefits as a widow(er) or mother or father on the deceased's earnings record for the month of death; or (3) a child of the deceased who is entitled to (or was eligible for) benefits on the deceased's earnings record for the month of death. For those widow(ers) who were not LISH, a possible anomaly was created by the LSDP limitations in Public Law 97-35 and existing regulations. An example of such an anomaly is the following situation.

A worker had been living in a nursing home for 3 years prior to his death because his wife was unable to provide the daily medical care he needed. Until

his death, the worker was visited frequently by his wife, who lived in the house to which the worker would have returned if he were able. The widow was receiving a Retirement Insurance Benefit (RIB) which exceeded her late husband's Primary Insurance Amount (PIA). Based on Pub. L. 97-35 and a strict interpretation of the regulatory definition of LISH, this widow would not qualify for the LSDP because she was neither LISH nor entitled to benefits based on her late husband's earnings record. (However, if the widow's RIB did not exceed her late husband's PIA, she would qualify for the LSDP.)

Present Policy

Operating instructions, as well as most of the pertinent regulatory sections, have been changed to reflect the changes in the law established by Public Law 97-35. To qualify as a LISH spouse, the widow(er) and the deceased must have "customarily lived together as husband and wife in the same residence" (§ 404.347). While temporary separations do not necessarily preclude the Social Security Administration (SSA) from considering a couple to be LISH, extended separations (including most that last 6 months or more) generally indicate the couple was not LISH.

However, in order to avoid the possible anomaly discussed above, SSR 82-50 was issued to provide for an exception when an extended separation is based solely on medical reasons. SSR 82-50 states:

If a husband and wife are (or were) separated and continue(d) to be separated, solely for medical reasons, SSA may consider them to be living in the same household even if the separation is (or was) likely to be permanent and there is (or was) little or no expectation of the parties again physically residing together. As long as the spouse who is now applying for the LSDP or spouse's benefits based on a deemed marriage has continued to demonstrate strong personal and/or financial concern for the worker, SSA will assume they would have lived together (absent evidence to the contrary) had the medical reasons not necessitated their separation, and will pay the LSDP or spouse's benefits to the spouse.

Proposed Policy

Since there are still some sections of our regulations that refer to the law on entitlement to the LSDP which predated Public Law 97-35 and since these sections no longer are applicable, we propose to update or remove them. We will eliminate obsolete §§ 404.393, 404.394, 404.395, and 404.765, 404.3(a), 404.612(e), 404.615(b), and 404.2 (a)(2) through (a)(6).

Also, we propose to incorporate the LISH policy interpretation found in SSR 82-50 into our regulations. The proposed policy interpretation will clearly allow for extended separations due to the confinement of either spouse in a nursing home, hospital, or other medical institution. As long as evidence indicates the husband and wife were initially separated, and continue to be separated, solely for medical reasons and would otherwise have resided together, they will be considered to be LISH.

Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the Federal Register. To download the file, modem dial (202) 512-1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These proposed rules impose no additional reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: November 27, 1995.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, subparts A, D, G, and H of

part 404 of chapter III of title 20 of the Code of Federal Regulations are proposed to be amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

Subpart A—[Amended]

1. The authority citation for subpart A of part 404 is revised to read as follows:

Authority: Secs. 203, 205(a), 216(j), and 702(a)(5) of the Social Security Act (42 U.S.C. 203, 405(a), 416(j), and 902(a)(5)).

§ 404.2 [Amended]

2. Section 404.2 is amended by removing paragraphs (a)(2) through (a)(6) and redesignating paragraph (a)(7) as paragraph (a)(2).

§ 404.3 [Amended]

3. Section 404.3 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

Subpart D—[Amended]

4. The authority citation for subpart D of part 404 is revised to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

5. Section 404.347 is revised to read as follows:

§ 404.347 "Living in the same household" defined.

Living in the same household means that you and the insured customarily lived together as husband and wife in the same residence. You may be considered to be living in the same household although one of you is temporarily absent from the residence. An absence will be considered temporary if:

(a) It was due to service in the U.S. Armed Forces;

(b) It was 6 months or less and neither you nor the insured were outside of the United States during this time and the absence was due to business, employment, or confinement in a hospital, nursing home, other medical institution, or a penal institution;

(c) It was for an extended separation, regardless of the duration, due to the confinement of either you or the insured in a hospital, nursing home, or other medical institution, if the evidence indicates that you were separated solely for medical reasons and you otherwise would have resided together; or

(d) It was based on other circumstances, and it is shown that you and the insured reasonably could have

expected to live together in the near future.

6. Section 404.390 is amended by revising the second sentence to read as follows:

§ 404.390 General.

* * * If the insured is not survived by a widow(er) who meets this requirement, all or part of the \$255 payment may be made to someone else as described in § 404.392.

7. Section 404.392 is amended by revising the section heading and the introductory text of paragraph (a) to read as follows:

§ 404.392 Who is entitled to the lump-sum death payment when there is no widow(er) who was living in the same household.

(a) *General.* If the insured individual is not survived by a widow(er) who meets the requirements of § 404.391, the lump-sum death payment shall be paid as follows:

* * * * *

§ 404.393 [Removed]

8. Section 404.393 is removed.

§ 404.394 [Removed]

9. Section 404.394 is removed.

§ 404.395 [Removed]

10. Section 404.395 is removed.

Subpart G—[Amended]

11. The authority citation for subpart G of part 404 is revised to read as follows:

Authority: Secs. 202 (i), (j), (o), (p), and (r), 205(a), 216(i)(2), 223(b), 228(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 402 (i), (j), (o), (p), and (r), 405(a), 416(i)(2), 423(b), 428(a), and 902(a)(5)).

§ 404.612 [Amended]

12. Section 404.612 is amended by removing paragraph (e) and redesignating paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g), respectively.

§ 404.615 [Amended]

13. Section 404.615 is amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

Subpart H—[Amended]

14. The authority citation for subpart H of part 404 is revised to read as follows:

Authority: Secs. 205(a) and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a) and 902(a)(5)).

§ 404.765 [Removed]

15. Section 404.765 is removed.

[FR Doc. 95-29533 Filed 12-5-95; 8:45 am]
BILLING CODE 4190-29-P

20 CFR Part 416

[Regulation No. 16]

RIN 0960-AE22

Income Exclusions in the Supplemental Security Income Program

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: These proposed supplemental security income (SSI) regulations update existing regulations to reflect the statutory amendment of the exclusion from income of Alaska Longevity Bonus (ALB) payments. They also update existing regulations to reflect the statutory exclusion from income of hostile fire pay received by an SSI claimant or recipient and reflect the current operating procedure of excluding hostile fire pay when determining the countable income of an ineligible spouse or ineligible parent. In addition, they update existing regulations to reflect the current operating procedure of excluding impairment-related work expenses, interest on excluded burial funds, appreciation in the value of excluded burial arrangements, and interest on the value of excluded burial space purchase agreements, when determining the countable income of an ineligible spouse or ineligible parent.

DATES: To be sure that your comments are considered, we must receive them no later than February 5, 1996.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966-2830, sent by E-mail to "regulations@ssa.gov" or delivered to 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1762.

SUPPLEMENTARY INFORMATION: For purposes of the SSI program, income is defined in our regulations to mean anything that is received in cash or in kind which can be used to meet an individual's needs for food, clothing, or shelter. These proposed regulations

include certain provisions which address items that are excluded from income.

Alaska Longevity Bonus Payments

Under section 1612(b)(2)(B) of the Social Security Act (the Act), Alaska Longevity Bonus (ALB) payments are excluded from income under certain circumstances.

Originally, the ALB program made monthly payments to residents of Alaska who had attained age 65 and had lived in the State continuously for at least 25 years. The SSI income exclusion applied to such payments if made under a program established before July 1, 1973. However, following a decision by the Alaska State Supreme Court that the 25-year residency requirement was unconstitutional, in 1984 the State legislature changed the residency requirement to 1 year.

Concerns were raised that since the revised (1984) ALB program was established after July 1, 1973, the controlling date of the original section 1612(b)(2)(B) provision, payments made under the revised ALB program could no longer be excluded for SSI purposes. Section 2616 of Public Law 98-369 was enacted on July 18, 1984 to address those concerns. Section 2616 amended section 1612(b)(2)(B) of the Act in such a way as to:

- Continue the ALB exclusion for persons who, prior to October 1985, became eligible for SSI and satisfied the 25-year residence requirement of the program as in effect prior to January 1, 1983; and

- Preclude extending the ALB exclusion to ALB payments based on the 1-year residency requirement.

Current regulations at §§ 416.1124(c)(7) and 416.1161(a)(12) follow the wording of the original statutory exclusion in section 1612(b)(2)(B) of the Act. Regulations at § 416.1124(c)(7) presently provide for excluding from the income of a claimant or recipient "[p]eriodic payments made by a State under a program established before July 1, 1973, and based solely on your length of residence and attainment of age 65 * * *." Regulations at § 416.1161(a)(12) presently provide for excluding from the income of an ineligible spouse or ineligible parent "[p]eriodic payments made by a State under a program established before July 1, 1973, and based solely on duration of residence and attainment of age 65 * * *."

The proposed regulations will change the wording of the above referenced regulations so that they conform to the 1984 legislation. The proposed regulatory language will not change

current operating procedures since those procedures already conform to the 1984 legislation.

Hostile Fire Pay

Although it is unlikely that an active member of the uniformed services would apply or be eligible for SSI benefits, some military service members have spouses and children who apply for and receive SSI benefits.

Under section 209(d) of the Act, basic pay is the only form of compensation to members of the uniformed services that is treated as wages for title II purposes. Under section 1612(a)(1) of the Act, earned income in the form of wages for SSI purposes is the same as wages for the title II annual earnings test. Therefore, basic pay is the only form of military compensation that is treated as wages, and hence, as earned income, for SSI purposes.

All other forms of compensation to members of the uniformed services are considered unearned income. These other forms of compensation include allowances paid in cash for food, clothing, and shelter; free food, clothing, and shelter; and special and incentive pay.

One form of special pay is hostile fire pay, which is authorized under 37 U.S.C. 310. Hostile fire pay is a type of special pay to a service member who, for any month he/she is entitled to basic pay, is:

- Subject to hostile fire or explosion of hostile mines; or
- On duty in an area in which he/she is in imminent danger of being exposed to hostile fire or explosion of hostile mines, and

While on duty in that area, other service members in the same area are subject to hostile fire or explosion of hostile mines; or

- Killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action.

Section 13733(b) of the Omnibus Budget Reconciliation Act of 1993 (OBRA), Pub. L. 103-66, amended section 1612(b) of the Act to exclude from income any hostile fire pay received in or after October 1993.

Current regulations do not reflect the exclusion from income of hostile fire pay for eligible individuals, but hostile fire pay has been excluded under SSI operating procedure since October 1, 1993. Moreover, under these instructions, such pay has been excluded in determining the income of ineligible spouses and parents whose income is deemed to eligible individuals.

In addition to adding to the regulations the statutorily required

exclusion of hostile fire pay from an eligible individual's income, we propose to include the current operating procedure of excluding hostile fire pay when determining the countable income of an ineligible spouse or ineligible parent. The proposed inclusion reflects the statutory authority granted the Commissioner of Social Security under section 1614(f) (1) and (2) of the Act to waive the deeming of income from an ineligible spouse or parent to an eligible individual when such deeming is determined by the Commissioner of Social Security to be inequitable under the circumstances. By specifically singling out hostile fire pay for exclusion from an eligible individual's income, Congress expressed its intent that receipt of these monies should not have an adverse effect on an individual's SSI eligibility or payment amount. This intent would not be realized if these monies were deemed to an eligible individual. The statutory exclusion of hostile fire pay would have little meaning if not applied to ineligible spouses and parents since, as noted above, it is unlikely that an active member of the uniformed services would be eligible for SSI.

Impairment-Related Work Expenses

Impairment-related work expenses (IRWE) are expenses for items or services which are directly related to enabling a person with a disability to work and which are necessarily incurred by that individual because of a physical or mental impairment as explained at regulations §§ 404.1576 and 416.976.

Prior to December 1, 1990, in determining countable income, an individual's IRWE were deducted from his/her earned income once eligibility was established without using this exclusion. Effective December 1, 1990, section 5033 of Public Law 101-508 amended section 1612(b)(4)(B)(ii) of the Act and liberalized the IRWE exclusion. The legislation allows an individual to use the IRWE exclusion to establish eligibility.

Regulations at § 416.1112(c)(6) recently have been revised to implement changes enacted by section 5033 of Public Law 101-508. These regulatory revisions were published in the Federal Register on August 12, 1994, at 59 FR 41400, 41405.

Regulations at § 416.1161(a) list the types of income that are excluded from the income of an ineligible spouse and ineligible parent for deeming purposes. IRWE are not included in this list, but IRWE have been excluded from the income of ineligible spouses and

ineligible parents under SSI operating procedures since 1990.

We propose to add to the regulations the current operating procedure which is to exclude IRWE when determining the countable income of an ineligible spouse or ineligible parent for deeming purposes. By specifically singling out IRWE for exclusion from an eligible individual's income, Congress expressed its intent that receipt of these monies should not have an adverse effect on an individual's SSI eligibility or payment amount. This intent would not be realized if these monies were deemed to an eligible individual. The proposed regulations would reflect the statutory authority granted the Commissioner of Social Security under section 1614(f) (1) and (2) of the Act to waive the deeming of income from an ineligible spouse or parent to an eligible individual when such deeming is determined by the Commissioner of Social Security to be inequitable under the circumstances.

Interest and Appreciation in Value of Excluded Burial Funds and Burial Space Purchase Agreements

Effective November 1, 1982, section 185 of Public Law 97-248 amended the Act to provide that any interest earned on excluded burial funds and any appreciation in the value of excluded burial arrangements left to accumulate, may be excluded from income by regulation. Effective April 1, 1990, section 8013 of Pub. L. 101-239 amended the Act to provide that interest earned on the value of agreements representing the purchase of excluded burial spaces is excluded from income if left to accumulate.

Regulations at § 416.1124(c)(9) implement the exclusion of interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements, effective November 1, 1982. Regulations at § 416.1124(c)(15) implement the exclusion of any interest earned on the value of agreements representing the purchase of excluded burial spaces, effective April 1, 1990.

Regulations at § 416.1161(a) (relating to the treatment of income of an ineligible spouse or ineligible parent) do not apply these exclusions for purposes of deeming income, but both types of interest and appreciation have been excluded from the income of ineligible spouses and ineligible parents under SSI operating procedure.

We propose to add to the regulations the current operating procedure which is to exclude interest on burial funds, appreciation in the value of burial arrangements, and interest on the value of burial space purchase agreements,

that are excluded from resources, when determining the countable income of an ineligible spouse or ineligible parent. The proposed regulations would reflect the statutory authority granted the Commissioner of Social Security under section 1614(f) (1) and (2) of the Act to waive the deeming of income from an ineligible spouse or parent to an eligible individual when such deeming is determined by the Commissioner of Social Security to be inequitable under the circumstances. By specifically singling out these monies for exclusion from an eligible individual's income, Congress expressed its intent that receipt of these monies should not have an adverse effect on an individual's SSI eligibility or payment amount. This intent would not be realized if these monies were deemed to an eligible individual.

We are making a technical change to conform the language of § 416.1124(c)(9) to a prior policy change. Effective July 11, 1990, changes related to the SSI burial fund exclusion were published in the Federal Register at 55 FR 28373-77. As a result of these changes, regulations at § 416.1231(b)(1) were amended to require that excluded burial funds be kept separate from all other resources not intended for the burial of the individual or spouse. Furthermore, section 416.1231(b)(7) was revised to provide that interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements are excluded from resources if left to accumulate and become part of the separate burial fund.

Current regulations at § 416.1124(c)(9) provide that we will not count as income interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become part of the separately identifiable burial fund. We are conforming this regulation to the prior regulatory change requiring the burial fund to be separate from other nonburial-related assets and not merely separately identifiable.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the Federal Register. To download the file, modem dial (202) 512-1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect format and will remain on the FBB during the comment period.

Regulatory Procedures
Executive Order 12866

We have consulted with the Office of Management and Budget and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations will impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance: Program No. 96.006-Supplemental Security Income.)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and Recordkeeping Requirements, Supplemental Security Income (SSI).

Approved: November 27, 1995.
Shirley Chater,
Commissioner of Social Security.

For the reasons set out in the preamble, part 416, subpart K, of chapter III of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

1. The authority citation for subpart K of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93-66 (87 Stat 154).

2. Section 416.1124 is amended by revising paragraphs (c)(7) and (c)(9), by removing the "and" at the end of paragraph (c)(15) and the period at the end of paragraph (c)(16) and by adding "; and" at the end of paragraph (c)(16) and new paragraph (c)(19) to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) * * *

(7) Alaska Longevity Bonus payments made to an individual who is a resident of Alaska and who, prior to October 1, 1985: met the 25 year residency requirement for receipt of such payments in effect prior to January 1, 1983; and, was eligible for SSI;

* * * * *

(9) Any interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become a part of the separate burial fund. (See § 416.1231 for an explanation of the exclusion of burial assets.) This exclusion from income applies to interest earned on burial funds or appreciation in the value of excluded burial arrangements which occur beginning November 1, 1982, or the date you first become eligible for SSI benefits, if later;

* * * * *

(19) Hostile fire pay received from one of the uniformed services pursuant to 37 U.S.C. 310.

3. Section 416.1161 is amended by revising paragraph (a)(12), by removing the period at the end of paragraph (a)(20) and adding a semi-colon in its place and by adding new paragraphs (a)(23), (a)(24) and (a)(25) to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

* * * * *

(a) * * *

(12) Alaska Longevity Bonus payments made to an individual who is a resident of Alaska and who, prior to October 1, 1985: met the 25 year residency requirement for receipt of such payments in effect prior to January 1, 1983; and, was eligible for SSI;

* * * * *

(23) Hostile fire pay received from one of the uniformed services pursuant to 37 U.S.C. 310;

(24) Impairment-related work expenses, as described in § 404.1576 of part 404, incurred and paid by an ineligible spouse or parent, if the ineligible spouse or parent receives disability benefits under title II of the Act; and

(25) Interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements which are left to accumulate and become part of separate burial funds, and interest accrued on and left to accumulate as part of the value of

excluded agreements representing the purchase of excluded burial spaces (see § 416.1124(c) (9) and (15)).

* * * * *

[FR Doc. 95-29535 Filed 12-5-95; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 667

[FHWA Docket No. 95-28]

RIN 2125-AD69

Elimination of Regulations Concerning the Public Lands Highways Discretionary Funds Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM) to remove a regulation.

SUMMARY: The FHWA is proposing to eliminate its regulations outlining the procedures to be followed in administering the Public Lands Highways (PLH) discretionary funds program. These provisions have become outdated and unnecessary as a result of amendments made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, 105 Stat. 1914) to the statutory provisions in title 23 of the United States Code (U.S.C.) which authorize distribution of some of the funds appropriated for Public Lands Highways among the States on the basis of need. These amendments to title 23, U.S.C., significantly modify and clarify the eligibility criteria and selection process of the PLH discretionary program; as a result, the FHWA regulations concerning the PLH discretionary program have become obsolete. Consequently, in the interests of streamlining FHWA regulations and providing more flexibility in the administration of this program, the FHWA is proposing to eliminate these regulations.

DATES: Comments must be received on or before February 5, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95-28, Federal Highway Administration, Room 4232, HCC-10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notice of

receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Mohan P. Pillay, Office of Engineering, HNG-12, (202) 366-4655 or Mr. Wilbert Baccus, Office of the Chief Counsel, HCC-32, (202) 366-1397, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Through the PLH Discretionary Program, the FHWA administers the allocation of Federal funds in the manner authorized by § 202(b) of title 23 of the U.S.C. "among those States having unappropriated or unreserved public lands, nontaxable Indian lands or other Federal reservations." Approximately \$56 million was made available to the States for the PLH Discretionary Program in FY 1995. The statute directs that 34 percent of the sums appropriated for public lands highways in a given fiscal year is to be allocated on the basis of need among qualifying States that apply for such funds through their State highway departments. (23 U.S.C. 202(b).) The statute also provides that these PLH funds are available for any kind of transportation project eligible for assistance under title 23, U.S.C., that is within or adjacent to or provides access to public lands areas. (23 U.S.C. 204(b).)

Although Congress did not direct that regulations be promulgated to implement the funding scheme established by this statute, the FHWA did promulgate regulations which outline the procedures for administering the PLH discretionary program. These regulations, for the most part, merely reiterate the application process and selection criteria outlined in the statute. For instance, the statute establishes that PLH discretionary funds are to be distributed on the basis of need among the States that apply through their State highway departments and that preference is to be given to those projects which are significantly impacted by Federal land and resource management activities. Part 667 restates these provisions, but it also supplements the statutory provisions with overly detailed descriptions of factors to be considered in the selection process and of the steps taken in the application and selection procedure. In addition, part 667 restates some of the factors established in the statute as defining the eligibility of certain projects for these funds.

The eligibility criteria and selection process of the PLH discretionary

program were modified and greatly clarified by amendments to title 23, U.S.C., that were enacted as part of the ISTEA (Pub. L. 102-240, 105 Stat. 1914). One change resulting from these amendments is that title 23, U.S.C., now provides a more detailed explanation of the kinds of projects which are eligible for PLH discretionary funds. The regulation delineating eligibility criteria in part 667 states that funds may be used for "engineering and construction of the mainline roadway including adjacent vehicular parking areas and construction elements related to scenic easements." (§ 667.7.) After the ISTEA amendments, title 23, U.S.C., now includes a provision entitled "Eligible Projects" which lists adjacent vehicular parking areas and acquisition of necessary scenic easements as two of seven types of projects qualifying for PLH funds.

These PLH regulations have also now become inconsistent with title 23, U.S.C., as a result of the ISTEA amendments. Section 667.7 of the regulations states that "funds may not be used for right-of-way costs, maintenance or other ancillaries such as sanitary, water and fire control facilities"; however, the list of eligible projects added to title 23, U.S.C. by the ISTEA includes, "construction and reconstruction of roadside rest areas including sanitary and water facilities." Thus, in general, the provisions regarding eligibility for PLH discretionary funds currently included in the FHWA regulations have become both outdated and unnecessary.

Amendments to title 23, U.S.C., added by the ISTEA also modify the selection process and the factors that will be taken into account in allocating PLH discretionary funds among the States. As a result of the ISTEA amendments, title 23, U.S.C., now states that preference will still be given to projects which are significantly impacted by Federal land and resource management activities, but now such preference will be given only if these projects are proposed by a State which contains at least 3 percent of the total public lands in the Nation. In light of this statutory change, the regulations in part 667 have become outdated because they provide that all projects which significantly benefit or improve Federal land and resource management will be given preference.

Consequently, as this examination of part 667 reveals, these regulations concerning the PLH discretionary program are unnecessary and in many instances either straightforwardly redundant or outdated because they have become inconsistent with the

authorizing statute. Therefore, the FHWA is proposing to eliminate part 667 as opposed to amending it to account for the changes brought about by the ISTEA amendments. Elimination of these regulations would provide more flexibility in administration of the PLH discretionary program. In addition, elimination of part 667 would have the effect of further streamlining FHWA regulations in accordance with the objectives of the President's Regulatory Reinvention Initiative.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures)

The FHWA has considered the impact of this document and has determined that it is neither a significant rulemaking action within the meaning of Executive Order 12866 nor a significant rulemaking under the regulatory policies and procedures of the Department of Transportation. This rulemaking would result in the elimination of FHWA regulations regarding administration of the PLH discretionary program. These regulations have become outdated and are unnecessary in light of the fact that the statutory provisions authorizing allocation of these funds adequately delineate the procedures to be used and the factors to be considered in selecting the States that will receive funding. This rulemaking eliminating these obsolete regulations would not cause any significant changes to the amount of funding available under the PLH Discretionary Program or to the process by which applicants are selected to receive funding. Thus, it is anticipated that the economic impact of this rulemaking will be minimal. In addition, it will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user

fees, or loan programs; nor will elimination of these regulations raise any novel legal or policy issues. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities and has determined that elimination of the FHWA regulations regarding administration of PLH discretionary funds will not have a significant economic impact on a substantial number of small entities. Elimination of these regulations will not affect the amount of funding available to the States through the PLH Discretionary Program or the procedures used to select the States eligible to receive these funds. Furthermore, States are not included in the definition of "small entity" set forth in 5 U.S.C. 601. Therefore, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not raise sufficient federalism implications to warrant the preparation of a federalism assessment. Elimination of these obsolete FHWA regulations concerning the PLH Discretionary Program would not preempt any State law or State regulation. No additional costs or burdens would be imposed on the States as a result of this action, and the States' ability to discharge traditional State governmental functions would not be affected by this rulemaking.

Executive Order 12372

Catalog of Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not create a collection of information requirement for the purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520.

National Environmental Policy Act

The FHWA has analyzed this rulemaking for the purposes of the

National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that this action would not have any effect on the quality of the environment. Therefore an environmental impact statement is not required.

Regulatory Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 667

Highways and roads, Public lands highway funds.

Issued on: November 27, 1995.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing and under the authority of 23 U.S.C. 202, 204, and 315, the FHWA proposes to remove and reserve part 667 of title 23, Code of Federal Regulations, as set forth below.

PART 667—PUBLIC LANDS HIGHWAYS FUNDS [REMOVED AND RESERVED]

1. Part 667 is removed and reserved.

[FR Doc. 95-29647 Filed 12-5-95; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915 and 1926

[Docket No. H-071B]

Occupational Exposure to Methylene Chloride

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; Limited reopening of the rulemaking record.

SUMMARY: On October 24, 1995, the Occupational Safety and Health Administration (OSHA) reopened the record (60 FR 54462) for the proposed revision of the regulation of methylene chloride (MC) (56 FR 57036, November 7, 1991) to incorporate recently concluded research on MC carcinogenicity.

The studies incorporated in the October 24 notice address the mechanism by which MC metabolites induce lung and liver cancer in mice and draw conclusions regarding the relevance of the mouse data to the assessment of human cancer risk. OSHA determined that those studies are relevant to full consideration of concerns raised by the MC rulemaking and reopened the record until November 24, 1995, to allow the public an opportunity to comment.

The October 24 notice generated substantially more interest than OSHA anticipated and the Agency is concerned that the initial 30 days was insufficient to allow full participation by interested parties. Accordingly, OSHA is reopening the comment period until December 29, 1995.

DATES: Written comments on the materials incorporated through the October 24, 1995 notice of reopening must be postmarked by December 29, 1995.

ADDRESSES: Comments are to be submitted in quadruplicate to the Docket Office, Docket No. H-071B, U.S. Department of Labor, room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219-7894. Written comments limited to 10 pages or less in length also may be transmitted by facsimile to (202) 219-5046, provided that the original and 3 copies are sent to the Docket Office thereafter.

FOR FURTHER INFORMATION CONTACT: Anne C. Cyr, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219-8148. For electronic copies of this Federal Register notice, contact the Labor News Bulletin Board (202) 219-4784; or OSHA's WebPage on Internet at <http://www.osha.gov/>. For news releases, fact sheets, and other short documents, contact OSHA FAX at (900) 555-3400 at \$1.50 per minute.

SUPPLEMENTARY INFORMATION:

I. Background

On November 7, 1991, OSHA issued a notice of proposed rulemaking (56 FR 57036) to address the significant risks of MC-induced health effects. The proposed rule required employers to reduce occupational exposure to MC and to institute ancillary measures, such as employee training and medical surveillance, for further protection of MC-exposed workers.

OSHA convened public hearings (57 FR 24438, June 9, 1992) in Washington, DC on September 16-24, 1992 and in

San Francisco, CA on October 14-16, 1992. The post-hearing period for the submission of additional briefs, arguments and summations ended on March 15, 1993.

On March 11, 1994, OSHA reopened the rulemaking record for 45 days (59 FR 11567) to obtain public input on three documents incorporated into the rulemaking record, one of which examined the relationship between MC exposure and human carcinogenesis. The limited reopening, which ended on April 25, 1994, generated 37 comments.

The Halogenated Solvents Industry Alliance (HSIA) subsequently submitted several recently completed studies which address the mechanism for MC-induced cancer in mice and which assert that species differences in the metabolism of MC preclude the use of mouse data to characterize human cancer risk. The utility of the mouse data in assessing human risk is a critical issue in this rulemaking. Therefore, OSHA concluded that it was appropriate, even at this late stage of the rulemaking process, to consider the HSIA-submitted studies in the drafting of the final rule. Accordingly, on October 24, 1995, the Agency reopened the rulemaking record to incorporate those studies and to provide the public with an opportunity to comment.

OSHA has been considering the impact of species differences on the MC risk assessment throughout this rulemaking, and has generated an extensive record over the nearly four years since the proposal was published. While the Agency has agreed with the HSIA that the new materials should be taken into account, the Agency still believes that every effort should be made to conclude this rulemaking expeditiously. To that end, OSHA reopened the record for 30 days to receive any additional comments and information regarding this issue. While the record was open, OSHA received many requests for the studies. Due to the substantial interest generated by the October 24 notice, the Agency has decided to allow interested parties additional time in which to submit their comments. Therefore, OSHA is extending the comment period until December 29, 1995.

OSHA will provide interested parties with copies of the materials incorporated into the methylene chloride record through the October 24, 1995 reopening notice, upon request, to facilitate full and timely public participation. Requests for copies of the studies should be addressed to the Christine Whittaker, Room N-3718, Health Standards Programs, OSHA, U.S. Department of Labor, 200 Constitution

Avenue, NW., Washington, DC 20210. Telephone: (202) 219-7174. Fax: (202) 219-7125.

II. Public Participation

Comments

Written comments regarding the materials incorporated into the methylene chloride record through the October 24, 1995 reopening notice must be postmarked by December 29, 1995. Four copies of these comments must be submitted to the Docket Office, Docket No. H-071B, U.S. Department of Labor, room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. (202) 219-7894. All materials submitted will be available for inspection and copying at the above address. Materials previously submitted to the Docket for this rulemaking need not be resubmitted.

III. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655), and 29 CFR part 1911.

Signed at Washington, DC, this 1st day of December 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95-29719 Filed 12-5-95; 8:45 am]

BILLING CODE 4510-26-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300405; FRL-4987-4]

RIN 2070-AC18

Maleic Hydrazide, Oryzalin, Hexazinone, Streptomycin; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: For each of the pesticides subject to the actions listed in this proposed rule, EPA has completed the reregistration process and issued a Reregistration Eligibility Decision (RED). In the reregistration process, all information to support a pesticide's continued registration is reviewed for adequacy and, when needed, supplemented with new scientific studies. Based on the RED tolerance assessments for the pesticide chemicals

subject to this proposed rule, EPA is proposing to revoke various tolerances for maleic hydrazide, oryzalin, and hexazinone. This document also proposes to delete as surplusage the term "negligible" from a regulation on streptomycin.

DATES: EPA must receive written comments, identified by the OPP document control number [OPP-300405], on or before February 5, 1996.

ADDRESSES: By mail, submit comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-300405]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Morris, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, Crystal Station #1, 3rd Floor, 2800 Crystal Drive, Arlington, VA 22202. Telephone: (703)-308-8029; e-mail: morris.jeffrey@epamail.epa.gov.

I. Legal Authorization

The Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. 301 et seq.) authorizes the establishment of tolerances (maximum legal residue levels) and exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities pursuant to section 408 (21 U.S.C. 346(a)). Without such tolerances or exemptions, a food containing pesticide residues is considered to be "adulterated" under section 402 of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 342). To establish a tolerance or an exemption under section 408 of the FFDCA, EPA must

make a finding that the promulgation of the rule would "protect the public health" (21 U.S.C. 346a(b)). For a pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 et seq.).

In 1988, Congress amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 et seq.) and required EPA to review and reassess the potential hazards arising from currently registered uses of pesticides registered prior to November 1, 1984. As part of this process, the Agency must determine whether a pesticide is eligible for reregistration or whether any subsequent actions are required to fully attain reregistration status. EPA has chosen to include in the reregistration process a reassessment of existing tolerances or exemptions from the need for a tolerance. Through this reassessment process, based on more recent data, EPA can determine whether a tolerance must be amended, revoked, or established, or whether an exemption from the requirement of one or more tolerances must be amended or is necessary.

The procedure for establishing, amending, or revoking tolerances or exemptions from the requirement of tolerances is set forth in 40 CFR parts 177 through 180. The Administrator of EPA, or any person by petition, may initiate an action proposing to establish, amend, revoke, or exempt a tolerance for a pesticide registered for food uses. Each petition or request for a new tolerance, an amendment to an existing tolerance, or a new exemption from the requirement of a tolerance must be accompanied by a fee. Current Agency policy on tolerance actions identified during the reregistration process is to waive the payment of fees if the tolerance action concerns revision or revocation of an established tolerance, or if the proposed exemption from the requirement of a tolerance requires the concurrent revocation of an approved tolerance. Comments submitted in response to the Agency's published proposals are reviewed, and the Agency then publishes its final determination regarding the specific tolerance actions.

II. Chemical-Specific Information and Proposed Actions

A. Maleic Hydrazide

1. *Regulatory history.* In 1952, USDA registered maleic hydrazide for use as a growth regulator. EPA issued a Registration Standard for maleic

hydrazide in 1988. In 1992, EPA issued a Data Call-In (DCI) notice for maleic hydrazide and the potassium salt of maleic hydrazide that required data to address ecological effects, environmental fate, and residue chemistry data gaps. EPA published a RED for maleic hydrazide in June 1994 that reflects a reassessment of all data submitted to date in response to the Registration Standard and the 1992 DCI. The RED also conditions the maleic hydrazide reregistration on the cranberry tolerance revocation proposed in this document. Persons interested in the details of this reassessment are referred to the maleic hydrazide RED (NTIS #PB88-236849).

2. *Current proposal.* EPA proposes to revoke the 15-ppm tolerance for maleic hydrazide residues in or on cranberries, as listed in 40 CFR 180.175(b). EPA is proposing this action for two reasons: (1) The registrant is not supporting the use of maleic hydrazide on this commodity, and end-use maleic hydrazide labels do not list cranberries as a registered use (Two States, Massachusetts and New Jersey, had FIFRA section 24(c) (Special Local Need) registrations for the use of maleic hydrazide on cranberries in 1984 and 1985; EPA cancelled those registrations in 1991, and EPA believes that since 1992 there has been little or no usage of maleic hydrazide on cranberries in those States.) Therefore, no residues of maleic hydrazide are expected in or on cranberries, making a cranberry tolerance unnecessary. (2) Also, EPA does not have adequate nature-of-the-residue data to determine that the cranberry tolerance for maleic hydrazide is protective of the public health. A tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act requires a finding that the tolerance will protect the public health, and to make such a finding for the established cranberry tolerance in 40 CFR 180.175(b), EPA needs adequate data on the nature of the residue (see 40 CFR part 158 for guidance on data requirements). To date, the Agency has not received these data.

If during the comment period of this proposed rule no party indicates that it will support the use of maleic hydrazide on cranberries by providing the necessary data, EPA will issue a final rule revoking the tolerance.

B. Oryzalin

1. *Regulatory history.* Oryzalin was first registered in the United States in 1974 for use as a preemergence herbicide in fruit and nut crops, vineyards, orchards, forest areas, noncrop areas, and agricultural crops. In

1987, EPA issued a Registration Standard for oryzalin that evaluated the studies submitted to that date. EPA issued a DCI for oryzalin in 1991 requiring additional phytotoxicity data, plant and animal analytical methods, and nondietary exposure data. The January 27, 1995 RED for oryzalin reflects a reassessment of all data submitted in response to the Registration Standard and the DCI. The RED also conditions the oryzalin reregistration on the tolerance actions proposed in this document. The Agency refers persons interested in this reassessment to the oryzalin RED (NTIS publication #PB90-174137).

2. *Current proposal.* EPA proposes to revoke the tolerances for oryzalin residues in or on the following commodities listed in 40 CFR 180.304(a): cottonseed, .05 ppm; grain, barley, .05 ppm; grain, wheat, .05 ppm; peas (succulent), .05 ppm; potatoes, .05 ppm; and soybeans, .1 ppm. EPA is proposing this action because the registrant is not supporting the use of oryzalin on these commodities, and end-use oryzalin labels do not list these commodities as registered uses (these have not been registered uses since before publication of the 1987 registration standard). As a result, residues of oryzalin in or on these commodities are not expected; therefore, the tolerances are not necessary.

EPA previously issued a proposal to remove the above-named commodities from 40 CFR 180.304(a). (See the Federal Register of January 18, 1995 (60 FR 3611).) That proposal is superseded by this document.

EPA has sufficient data to ascertain the adequacy of the established tolerances listed 40 CFR 180.304(a) for the above-named commodities. However, if no party indicates support for the use of oryzalin on these commodities during the comment period of this proposed rule, EPA will issue a final rule revoking the tolerances.

C. Hexazinone

1. *Regulatory history.* EPA first registered hexazinone in 1975 for use as a broad-spectrum herbicide for general weed control. In 1982, EPA issued an initial Registration Standard for hexazinone, and in 1988 EPA issued a second Registration Standard. The 1988 Standard summarized available data supporting the registration of hexazinone products and required additional product chemistry, residue chemistry, toxicology, ecological effects, and environmental fate data. The January 27, 1995 RED for hexazinone

represents an assessment of the data required by the Registration Standards. The RED also conditions the hexazinone reregistration on the tolerance actions proposed in this document. Persons interested in this reassessment should contact NTIS (telephone no. 703-487-4650) for a copy of the hexazinone RED.

2. *Current proposal.* EPA proposes to revoke the tolerances for hexazinone residues in or on the following commodities in 40 CFR 180.396: eggs, .1 ppm; poultry, fat, .1 ppm; poultry, meat, .1 ppm; poultry, mby, .1 ppm; pineapple, fodder, 5 ppm; and pineapple, forage, 5 ppm.

EPA is proposing to revoke the egg and poultry tolerances because the maximum residue expected in poultry tissues would be .005 ppm, an order of magnitude below the limit of detection for hexazinone metabolites, resulting in no detectable residues. Therefore, tolerances are not needed for hexazinone residues in or on eggs and poultry. The pineapple fodder and forage tolerances are proposed for revocation because EPA no longer regulates pineapple fodder and forage as raw agricultural commodities (since the Agency does not consider pineapple fodder and forage to be produced in significant quantities to warrant regulation).

If no valid objections are raised during the comment period following this proposed rule, EPA will issue a final rule revoking the tolerances.

D. Streptomycin

1. *Regulatory history.* Streptomycin has been used in the United States since the 1940s to treat bacterial infections in humans and was first registered as a pesticide in 1955. At that time, it was used primarily as a bactericide/fungicide on selected agricultural and nonagricultural crops. Other uses include seed treatment, residential use, and as an aquarium algacide. In 1988, EPA issued a Registration Standard for streptomycin requiring data to support the registered uses regulated under FIFRA.

EPA issued a RED for streptomycin on September 30, 1992, reflecting a reassessment of all data submitted in response to the Registration Standard. The RED also conditions the streptomycin reregistration on the tolerance action proposed in this document. Persons interested in this reassessment should contact NTIS (telephone no. 703-487-4650) for a copy of the streptomycin RED.

2. *Current proposal.* EPA proposes to delete "negligible" from 40 CFR 180.245 because in this case the term "negligible" is surplusage.

III. Public Comment Procedures

EPA invites interested persons to submit written comments, information, or data in response to this proposed rule. Comments must be submitted by February 5, 1996. Comments must bear a notation indicating the document control number. Three copies of the comments should be submitted to either location listed under **ADDRESSES** at the beginning of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any or all of that information as "Confidential Business Information" (CBI). EPA will not disclose information so marked, except in accordance with procedures set forth in 40 CFR part 2. A second copy of such comments, with the CBI deleted, also must be submitted for inclusion in the public record. EPA may publicly disclose without prior notice information not marked confidential.

Any person who has registered or submitted an application for registration of a pesticide under FIFRA, as amended, that contains any of the ingredients listed herein may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCFA.

Documents considered and relied upon by EPA pertaining to this action, and all written comments filed pursuant to this proposed rule, will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA between 8 a.m. and 4:30 p.m., Monday through Friday, except for legal holidays.

A record has been established for this rulemaking under docket number [OPP-300405] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

IV. Regulatory Assessment Requirements

To satisfy requirements for analysis specified by Executive Order 12866, the Regulatory Flexibility Act, the Paperwork Reduction Act, and the Unfunded Mandates Reform Act, EPA has analyzed the impacts of this proposal.

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not a "significant regulatory action," because it does not meet any of the regulatory-significance criteria listed above.

B. Regulatory Flexibility Act

EPA has reviewed this proposed rule under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.) and has determined that it will not have a significant

economic impact on a substantial number of small businesses, small governments, or small organizations. Accordingly, I certify that this proposed rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

D. Unfunded Mandates Reform Act

This proposed rule contains no Federal mandates under Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, for State, local, or tribal governments or the private sector, because it would not impose enforceable duties on them.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 30, 1995.

Jack E. Housenger,
Chief, Special Review Branch, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.175, by removing paragraph (b) and designating it as "reserved" as follows:

§ 180.175 Maleic hydrazide; tolerances for residues.

* * * * *

(b) [Reserved]

§ 180.245 [Amended]

3. By amending § 180.245 *Streptomycin; tolerances for residues*, by removing the term "negligible" from the text.

§ 180.304 [Amended]

4. In § 180.304 *Oryzalin; tolerances for residues* by amending paragraph (a) in the table therein by removing the entries for cottonseed; grain, barley; grain, wheat; peas (succulent); potatoes; and soybeans.

§ 180.396 [Amended]

5. In § 180.396 *Hexazinone; tolerances for residues* by amending

paragraph (a) in the table therein by removing the entries for eggs; poultry, fat; poultry, mby; poultry, meat; pineapple, fodder; and pineapple, forage.

[FR Doc. 95-29734 Filed 12-5-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300403; FRL-4986-2]

RIN 2070-AC18

Tebuthiuron; Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA has completed the reregistration process and issued a Reregistration Eligibility Document (RED) for tebuthiuron. In the reregistration process, all information to support this pesticide's continued registration is reviewed for adequacy and, when needed, supplemented with new scientific studies. Based on the RED tolerance assessment for the pesticide chemical subject to this proposed rule, EPA is proposing to lower the tolerance for grass hay and grass rangeland forage and change the commodity name grass, rangeland forage to grass, forage.

DATES: Written comments, identified by the OPP document control number [OPP-300403], must be received on or before January 5, 1996.

ADDRESSES: By mail, submit comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted in ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [OPP-300403]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Ben Chambliss, Special Review

and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, Crystal Station #1, 3rd Floor, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8174; e-mail: chambliss.ben@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Legal Authorization

The Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., authorizes the establishment of tolerances (maximum legal residue levels) and exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities pursuant to section 408 (21 U.S.C. 346(a)). Without such tolerances or exemptions, a food containing pesticide residues is considered to be "adulterated" under section 402 of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 342). To establish a tolerance or an exemption under section 408 of the FFDCA, EPA must make a finding that the promulgation of the rule would "protect the public health" (21 U.S.C. 346a(b)). For a pesticide to be sold and distributed the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq.).

In 1988, Congress amended FIFRA and required EPA to review and reassess the potential hazards arising from currently registered uses of pesticides registered prior to November 1, 1984. As part of this process, the Agency must determine whether a pesticide is eligible for reregistration and if any subsequent actions are required to fully attain reregistration status. EPA has chosen to include in the reregistration process a reassessment of existing tolerances or exemptions from the need for a tolerance. Through this reassessment process, EPA can determine whether a tolerance must be amended, revoked, or established, or whether an exemption from the requirement of one or more tolerances must be amended or is necessary.

The procedure for establishing, amending, or repealing tolerances or exemptions from the requirement of tolerances is set forth in the Code of Federal Regulations, 40 CFR parts 177 through 180. Pursuant to 40 CFR 180.32, EPA is proposing the amendment of the following tolerances. The Administrator of EPA or any person may initiate an action proposing to establish, amend,

revoke, or exempt a tolerance for a pesticide registered for food uses. Each petition or request for a new tolerance, an amendment to an existing tolerance, or a new exemption from the requirement of a tolerance must be accompanied by a fee. Current Agency policy on tolerance actions identified during the reregistration process is to waive the payment of fees if the tolerance action concerns revision or revocation of an established tolerance. Comments submitted in response to the Agency's published proposals are reviewed; the Agency then publishes its final determination regarding the specific tolerance actions.

II. Chemical-Specific Information and Proposed Actions

Tebuthiuron: Amendment to 40 CFR 180.390

1. Regulatory background.

Tebuthiuron is a nonselective soil activated herbicide used to control broadleaf and woody weeds, grasses, and brush on terrestrial feed crop and terrestrial nonfood crop sites. Tolerances exist for tebuthiuron use on grass hay and forage as well as secondary residues in meat of cattle, goats, horses, sheep, and in milk. Tebuthiuron was registered by the Elanco Products Co. in 1974. The registration was later transferred to DowElanco in 1989. A Registration Standard was issued in July 1987 for all pesticide products containing tebuthiuron. Under this standard, registrants were required to generate and supply missing data and to replace unacceptable data. In June 1994, the Agency issued the Reregistration Eligibility Document for Tebuthiuron. This document reflects a reassessment of all data submitted in response to the Registration Standard of Tebuthiuron.

2. *Proposed action*—a. Lower the tolerance for grass hay and forage from 20 parts per million (ppm) to 10 ppm. A tolerance reduction from 20 ppm to 10 ppm is recommended for grass hay and forage based on data showing that combined residues of tebuthiuron and its regulated metabolites did not exceed 10 ppm on any grass forage or hay sample in field trials conducted under label conditions.

b. Amend the commodity definition listed in 40 CFR 180.390 to conform to commodity definitions currently used by EPA to read as follows: "Grass, rangeland, forage" is proposed to read as "Grass, forage".

III. Public Comment Procedures

Interested persons are invited to submit written comments, information,

or data in response to this proposed rule. Comments must be submitted by January 5, 1996. Comments must bear a notation indicating the document control number. Three copies of the comments should be submitted to either location listed under **ADDRESSES**.

Information submitted as a comment concerning this document may be claimed confidential by marking any or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of a comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Documents considered and relied upon by EPA pertaining to this action, and all written comments filed pursuant to this proposed rule, will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays. To satisfy requirements for analysis specified by Executive Order 12866 and the Regulatory Flexibility Act, EPA has considered the impacts of this proposal.

A record has been established for this rulemaking under docket number [OPP-300403] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

IV. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this rule is not a "significant regulatory action," because it does not meet any of the regulatory-significance criteria listed above.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and EPA has determined that it will not have a significant economic impact on a substantial number of small businesses,

small governments, or small organizations.

Accordingly, I certify that this proposed rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

D. Unfunded Mandates

This proposed rule contains no Federal mandates under Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 for State, local, or tribal governments or the private sector because it would not impose enforceable duties on them.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 30, 1995.
Jack E. Housenger,
Chief, Special Review Branch, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.390, by amending the table therein by revising the entries for grass, hay and grass, rangeland, forage to read as follows:

§ 180.390 Tebuthiuron; tolerances for residues.

Commodity	Parts per million
* * * * *	
Grass, hay	10.0
Grass, forage	10.0
* * * * *	

[FR Doc. 95-29735 Filed 12-5-95; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Parts 180 and 186

[PP 3F4169 and FAP 3H5655/P628; FRL-4971-7]

RIN 2070-AC18

Imidacloprid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish permanent tolerances for residues of the insecticide (1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine) (also known as imidacloprid) and its metabolites in or on cottonseed and cotton gin byproducts, to revoke the existing feed additive tolerance for imidacloprid on cotton meal, and to establish a maximum residue limit for imidacloprid on cottonseed meal. Bayer Corp. (formerly Miles, Inc.) submitted petitions pursuant to the Federal Food, Drug Cosmetic Act (FFDCA) requesting these regulations to establish certain maximum permissible levels for residues of the insecticide.

DATES: Comments, identified by the document control number, [PP 3F4169 and FAP 3H5655/P628], must be received on or before January 5, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All Written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII format. All comments and data in electronic form must be identified by the docket number [PP 3F4169 and FAP 3H5655/P628]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386; e-mail: edwards.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to petitions from Miles, Inc., EPA issued final rules establishing pesticide tolerances under section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the insecticide (1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine, in or on the raw agricultural commodities apples at 0.5 part per million (ppm), potatoes at 0.3 ppm, and cottonseed at 6.0 ppm. Based on a feed additive petition (FAP) 3H5655 from Miles, Inc., EPA established food or feed additive regulations under FFDCA section 409, 21 U.S.C. 348, for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as imidacloprid, on apple pomace (wet or dried) at 3 ppm, on potato chips at 0.4 ppm, on potato waste at 0.9 ppm, and on cottonseed meal at 9.0 ppm. The tolerances for cottonseed and cottonseed meal were established as time-limited tolerances and are due to expire on November 30, 1996 (see the Federal Register of November 30, 1994 (59 FR 61278)).

The reason the cottonseed and cottonseed meal tolerances were established as 2-year time-limited tolerances was to enable Bayer to complete additional cotton residue trials and present a final report. On June 2, 1994, the Agency issued a guidance document on crop residue trials. Among other things, this document provided guidance on the number and location of domestic crop field trials for establishment of pesticide residue trials.

Based on this guidance document, the Agency determined that additional residue trials were needed and residue data on gin trash were required to fully support the cotton tolerances.

On March 31, 1995, Bayer submitted the additional residue studies. A request was also submitted to establish a tolerance for cotton gin byproducts. These data have been reviewed and determined to be adequate to support both the proposed cotton gin byproducts tolerance and the removal of the expiration date for the cottonseed and cottonseed meal tolerances.

EPA, however, has determined a section 409 feed additive tolerance is no longer necessary to prevent cottonseed meal from being deemed adulterated, and, therefore, EPA is preparing to revoke the cottonseed meal tolerance. Additionally, EPA is proposing to establish a maximum residue limit for imidacloprid residues in cottonseed meal to simplify enforcement.

II. Statutory Background

The FFDCA, 21 U.S.C. 301 et seq., authorizes the establishment by regulation of maximum permissible levels of pesticides in foods. Such regulations are commonly referred to as "tolerances." Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is "adulterated" under section 402 of the FFDCA and may not be legally moved in interstate commerce. 21 U.S.C. 331, 342. EPA was authorized to establish pesticide tolerances under Reorganization Plan No. 3 of 1970. 5 U.S.C. App. at 1343 (1988). Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

The FFDCA has separate provisions for tolerances for pesticide residues on raw agricultural commodities and for residues on processed food. For pesticide residues in or on raw commodities, EPA establishes tolerances, or exemptions from tolerances when appropriate, under section 408 of the act. 21 U.S.C. 346a. EPA regulates pesticide residues in processed foods under section 409 which pertains to "food additives." 21 U.S.C. 348. Maximum residue regulations established under section 409 are commonly referred to as food additive tolerances. Section 409 food additive tolerances are needed, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, a pesticide residue in processed food will not render the food adulterated if the

residue results from application of the pesticide to a raw commodity consistent with a section 408 tolerance and the residue in the processed food when "ready to eat" has been removed to the extent possible by good manufacturing processes and is below the tolerance set under section 408. This exemption in section 402(a)(2) is commonly referred to as the "flow-through" provision because it allows the section 408 raw food tolerance to flow through to the processed food form.

III. Proposed Removal of Expiration Date from Cottonseed Tolerance and Establishment of Cotton Gin Byproduct Tolerance

The scientific data submitted in the petition and other relevant material have been evaluated regarding the Miles' request to remove the expiration date from the cottonseed tolerance and to establish a tolerance for cotton gin byproducts. The toxicological data considered in support of the tolerance include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/bwt); rat and rabbit teratology studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

2. A 2-year rat feeding/carcinogenicity study that was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/bwt in male and 7.6 mg/kg/bwt female) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm.

3. A 1-year dog feeding study with a NOEL of 1,250 ppm (41 mg/kg/bwt).

4. A 2-year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and that had a NOEL of 1,000 ppm (208 mg/kg/day).

There is no cancer risk associated with exposure to this chemical. Imidacloprid has been classified under "Group E" (no evidence of carcinogenicity for humans) under EPA's cancer Assessment Guidelines by the Office of Pesticide Programs (OPP) Reference Dose (RfD) Committee.

The reference dose (RfD), based on the 2-year rat feeding/ carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from published uses is 0.008088 mg/kg/day. This represents 14% of the RfD for the overall U.S. population. For exposure of the most highly exposed subgroup in the population, children

(ages 1 to 6 years), the TMRC is 0.016735 mg/kg/day. This is equal to 30% of RfD. The proposed cotton gin byproduct tolerance will not increase the TMRC. Dietary exposure from the existing uses and proposed uses will not exceed the reference dose for any subpopulation (including infants and children) based on the information available from EPA's Dietary Risk Evaluation System.

The nature of the residue in plants and livestock is adequately understood. The residues of concern are imidacloprid and its metabolites that contain the 6-chloropyridinyl moiety, all calculated as imidacloprid. The analytical methods are common moiety methods for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. Adequate geographically representative magnitude of the residue crop field trial data for imidacloprid on cotton indicate that residues of total imidacloprid will not exceed the proposed tolerances when the formulation is used as directed. Based on the results of the imidacloprid bovine and poultry feeding studies, finite imidacloprid residues will occur in meat, milk, poultry, and eggs from feeding of imidacloprid-treated feed items, or their processed feed items, when the formulations are used as directed. Appropriate secondary tolerances are established.

There are currently no actions pending against the continued registration of this chemical.

This pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

IV. Proposed Revocation of the Feed Additive Tolerance for Cottonseed Meal

In June 1995 (60 FR 31300, June 14, 1995), EPA issued a revised policy concerning when section 409 food and feed additive tolerances were needed to prevent the adulteration of foods and animal feeds. Under EPA's revised policy, a section 409 tolerance is necessary for pesticide residues in processed food when it is likely that the level of some residues of the pesticide will exceed the section 408 tolerance level in "ready to eat" processed food. Of particular relevance to the imidacloprid feed additive tolerance is

EPA's decision to interpret the term "ready to eat" processed food as food ready for consumption "as is" without further preparation. For foods that are found to be not "ready to eat," EPA takes into account the dilution of residues that occurs in preparing a "ready to eat" food.

EPA has determined that cottonseed meal is not a "ready to eat" animal feed. EPA has found no evidence that cottonseed meal is fed to livestock as a stand-alone feedstock. Rather, cottonseed meal is used as an ingredient in animal feeds. As such, cottonseed meal can constitute up to 50 percent of an animal feed.

The section 408 tolerance for imidacloprid on cottonseed is 6 parts per million (ppm). The highest residue found in crop field trials for imidacloprid on cotton was 5.2 ppm. A processing study showed that in producing cottonseed meal residues concentrated 50 percent (a concentration factor of 1.5X). Thus, given this information, it is likely that imidacloprid residues of 7.8 ppm (1.5 X 5.2) could occur in cottonseed meal. However, to project what residues are likely in "ready to eat" animal feed containing cottonseed meal the 7.8 ppm level must be divided by 2 to allow for dilution occurring when cottonseed meal is added to other ingredients in the preparation of animal feed. Once this dilution is taken into account, the likely residue of imidacloprid in animal feed would not be expected to exceed 3.9 ppm. Since this is below the section 408 tolerance level, animal feed containing such residue levels would not be adulterated, and no section 409 tolerance is needed. Accordingly, EPA proposes to revoke the section 409 feed additive tolerance for imidacloprid in cottonseed meal.

V. Proposed Establishment of a Maximum Residue Level of Imidacloprid Residues in Cottonseed Meal

In the June 1995 policy announcement, EPA noted that it generally would establish maximum residue levels (MRLs) under FFDCA section 701 for not-ready-to-eat foods where such foods could contain residues exceeding the section 408 tolerance. EPA's rationale was that such MRLs are important to the efficient enforcement of the FFDCA. It is far less resource intensive for FDA and USDA, which are the Federal agencies which regulate pesticide residue levels in foods, to monitor residue levels in the bulk commodities used in preparing ready-to-eat foods than in the myriad of

ready-to-eat foods manufactured from such commodities.

MRLs will enforce the statutory requirements that, where no food additive tolerance has been established, pesticide residues in processed food resulting from application of the pesticide to the precursor raw commodity render the food adulterated unless the pesticide was used in conformity with the applicable section 408 tolerance and the pesticide residue has been removed to the extent possible in good manufacturing practice. 21 U.S.C. 342(a)(2)(C). Thus, MRLs will reflect the maximum residue in processed food consistent with a legal level of residues being present on the precursor raw commodity and the use of good manufacturing practices.

Processed foods not in compliance with an applicable MRL will be deemed adulterated under section 402 of the act.

EPA will compute the MRL by multiplying the maximum residue found in the raw commodity in field trials by the concentration factor determined in processing studies using good manufacturing practices. As noted, the maximum residue from the imidacloprid field trials is 5.2 ppm and the concentration factor for processing is 1.5X. Multiplying 5.2 ppm by 1.5 yields a product of 7.8 ppm. EPA believes it is appropriate to round 7.8 ppm up to 8 ppm and proposes 8 ppm as the MRL for imidacloprid residues in cottonseed meal. For purposes of enforcement of the MRL, the same analytical method used for enforcement of the section 408 tolerances should be used.

EPA is proposing to place this MRL in existing part 186 of title 40 of the Code of Federal Regulations rather than creating a new part of title 40. Currently, 40 CFR part 186 contains section 409 feed additive tolerances organized by pesticide. EPA believes it will be clearer to the regulated community and to enforcement personnel if all regulations pertaining to residue levels of a pesticide in animal feeds are located in the same part of the Code of Federal Regulations. Because EPA is proposing to expand the type of regulation that would be included in part 186, EPA proposes modifying the title of part 186 to "Pesticides in Animal Feeds" to reflect that change.

VI. Public Participation

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after

publication of this document in the Federal Register that the portion of this rulemaking proposal concerning establishment, amendment, or revocation of tolerances under section 408 be referred to an Advisory Committee in accordance with section 408(e) of FFDCA.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating the document control number, [PP 3F4169 and FAP 35655/P628]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

VII. Administrative Matters

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950). EPA has treated regulations similar to the establishment of

tolerances as also not having a significant economic impact on substantial number of small entities. Therefore, the proposed MRL is not expected to have such impact.

List of Subjects in 40 CFR Parts 180 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 9, 1995.

Peter Caulkins,
Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180 and 186 be amended as follows:

PART 180—[AMENDED]

- 1. In part 180:
 - a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

- b. In § 180.472, by amending paragraph (a) by adding and alphabetically inserting the following new entries and by removing paragraph (b) and designating it as reserved, to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.

(a) * * *

Commodity	Parts per million

Cotton, gin byproducts	4
Cottonseed	6

(b) [Reserved]
* * * * *

PART 186—[AMENDED]

- 2. In part 186:
 - a. By revising the title of part 186 to read as follows:

Part 186—Pesticides in Animal Feed

- b. The authority citation for part 186 is revised to read as follows:

Authority: 21 U.S.C. 342, 348, and 701.

- c. In § 186.900, by revising paragraph (b), to read as follows:

§ 186.900 1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolinimine.

* * * * *

(b) A maximum residue level regulation is established for residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine in or on the following feed resulting from application of the insecticide to cotton:

Food	Parts per million
Cottonseed meal	8

This regulation reflects the maximum level of residues in cottonseed meal consistent with use of 1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine on cotton in conformity with § 180.472 of this chapter and with the use of good manufacturing practices.

* * * * *
[FR Doc. 95-29250 Filed 12-5-95; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7163]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard

Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646-2756.
SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are

made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism

implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arizona	Flagstaff (City), Coconino County.	Clay Avenue Wash	At Milton Road	*6,895	*6,894
			Approximately 450 feet upstream of Malpais Lane.	*6,897	*6,899
			Approximately 80 feet upstream of Blackbird Forest Street.	*6,900	*6,901
			At Chateau Drive	*6,905	*6,905
			Approximately 980 feet upstream of Chateau Drive.	*6,929	*6,930
			Approximately 1,300 feet upstream of Chateau Drive.	*6,931	*6,931

Maps are available for inspection at the City of Flagstaff, City Hall, 211 West Aspen Avenue, Flagstaff, Arizona.

Send comments to The Honorable Christopher J. Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.

Idaho	Ada County, (Unincorporated Areas).	Cottonwood Gulch	Approximately 7,615 feet above Garrison Road at the City of Boise corporate limits.	None	*2,896
			Approximately 9,100 feet above Garrison Road.	None	*2,930
			Approximately 100 feet upstream of Shaw Mountain Road.	None	*2,953
			Approximately 1,280 feet above Shaw Mountain Road.	None	*2,980
		Stuart Gulch	Approximately 2,280 feet above Shaw Mountain Road.	None	*3,010
			Approximately 2,000 feet downstream of Cartwright Road at the City of Boise corporate limits.	None	*2,796
			Approximately 1,360 feet downstream of Cartwright Road.	None	*2,840
			Approximately 500 feet downstream of Cartwright Road.	None	*2,861

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Hulls Gulch	Approximately 700 feet downstream of McCord Lane at the City of Boise corporate limits.	None	*2,864
			At McCord Lane	None	*2,903
			Approximately 2,300 feet upstream of McCord Lane.	None	*2,971

Maps are available for inspection at the Ada County Development Services Office, 650 Main Street, Boise, Idaho.

Send comments to The Honorable Vern Bisterfeldt, Chairman, Ada County Board of Commissioners, 650 Main Street, Boise, Idaho 83702.

Idaho	Boise (City), Ada County.	Stuart Gulch	Approximately 100 feet upstream of Stuart Gulch Road.	None	*2,692
			Approximately 3,000 feet upstream of Stuart Gulch Road at an unnamed road.	None	*2,745
			Approximately 4,600 feet upstream of Stuart Gulch Road at an unnamed road.	None	*2,785
			Approximately 5,000 feet upstream of Stuart Gulch Road.	*2,800	*2,795
			Approximately 6,910 feet upstream of Stuart Gulch Road at the City of Boise corporate limits.	None	*2,825
		Stuart Gulch Split Flow Channel.	At the convergence with Stuart Gulch, approximately 2,350 feet upstream of Stuart Gulch Road.	None	*2,725
			Approximately 2,200 feet upstream of the convergence with Stuart Gulch at an unnamed road.	None	*2,775
		Crane Gulch	At the divergence from Stuart Gulch	None	*2,800
			At Hill Road	None	*2,732
			Just upstream of Parkhill Drive	None	*2,750
			Just upstream of Cottonwood Court	None	*2,773
			Just upstream of Ranch Road	None	*2,795
		Hulls Gulch	Just downstream of Curling Drive	None	*2,865
			Just upstream of the intersection of 9th Street and Heron Street.	None	*2,735
			Approximately 1,400 feet downstream of Mile High Road at 9th Street.	None	*2,761
			Approximately 1,000 feet upstream of Mile High Road.	None	*2,826
			Approximately 2,300 feet upstream of Mile High Road at the City of Boise corporate limits.	None	*2,864
		Cottonwood Gulch	Approximately 1,100 feet upstream of Garrison Road.	None	*2,748
			At confluence with Freestone Creek	None	*2,793
			Approximately 4,300 feet upstream of confluence with Freestone Creek at the City of Boise corporate limits.	None	*2,878
Approximately 5,085 feet upstream of confluence with Freestone Creek at the City of Boise corporate limits.	None		*2,898		

Maps are available for inspection at the Office of Community Planning and Development, City Hall, 150 North Capitol Boulevard, Boise, Idaho.

Send comments to The Honorable Brent H. Coles, Mayor, City of Boise, City Hall, P.O. Box 500, Boise, Idaho 83701-0500.

Texas	Uvalde (City), Uvalde County.	Cooks Slough	Approximately 500 feet downstream of West Main Street.	*900	*899
			Just downstream of Fort Clark Street	*903	*901
			Approximately 4,300 feet downstream of Benson Road.	*911	*908
			Approximately 300 feet downstream of Benson Road.	*915	*917

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified

Maps are available for inspection at Uvalde City Hall, Highway 90, Uvalde, Texas.
 Send comments to The Honorable George Horner, Mayor, City of Uvalde, P.O. Box 799, Uvalde, Texas 78801.

Texas	Uvalde County, (Unincorporated Areas).	Cooks Slough	Approximately 1,100 feet upstream of U.S. Highway 83 (or 100 feet upstream of South Grove Street).	*891	*893
			Just downstream of the grade control structure.	*906	*904
			Approximately 2,470 feet upstream of Benson Road (FM 1052).	*918	*920

Maps are available for inspection at the County Judge's Office, Uvalde County Courthouse, Courthouse Square, Corner of Main and Getty Streets, Uvalde, Texas.
 Send comments to The Honorable William R. Mitchell, County Judge, Uvalde County Courthouse, Uvalde, Texas 78801.

Washington	Ferry County, (Unincorporated Areas).	Kettle RiverReach 7 ..	Approximately 73.96 miles upstream of confluence with the Columbia River.	None	*1,806	
			Approximately 74.66 miles upstream of confluence with the Columbia River.	None	*1,810	
			Approximately 75.17 miles upstream of confluence with the Columbia River.	*1,813	*1,812	
			Approximately 75.52 miles upstream of confluence with the Columbia River.	*1,814	*1,814	
			Approximately 75.84 miles upstream of confluence with the Columbia River.	*1,816	*1,815	
			Kettle RiverReach 1 (Near Barstow).	Approximately 9.87 miles upstream of confluence with the Columbia River.	None	*1,306
				Approximately 10.36 miles upstream of confluence with the Columbia River.	None	*1,309
				Approximately 10.85 miles upstream of confluence with the Columbia River.	None	*1,312
			Kettle RiverReach 2 (Near Orient).	Approximately 18.62 miles upstream of confluence with the Columbia River.	None	*1,389
				Approximately 18.77 miles upstream of confluence with the Columbia River.	None	*1,390
				Approximately 19.17 miles upstream of confluence with the Columbia River.	None	*1,391
			Kettle RiverReach 3 (Near Laurier).	Approximately 27.24 miles upstream of confluence with the Columbia River.	None	*1,435
				Approximately 27.53 miles upstream of confluence with the Columbia River.	None	*1,438
				Approximately 28.00 miles upstream of confluence with the Columbia River.	None	*1,441
				Approximately 28.27 miles upstream of confluence with the Columbia River.	None	*1,443
			Kettle RiverReach 4 (Near Danville).	Approximately 58.0 miles upstream of confluence with the Columbia River.	None	*1,732
				Approximately 58.43 miles upstream of confluence with the Columbia River.	None	*1,733
			Kettle RiverReach 5 (Near Curlew).	Approximately 64.87 miles upstream of confluence with the Columbia River.	None	*1,764
				Approximately 65.17 miles upstream of confluence with the Columbia River.	None	*1,765
				Approximately 65.45 miles upstream of confluence with the Columbia River.	None	*1,766
Kettle RiverReach 8 (Near Ferry).	Approximately 84.78 miles upstream of confluence with the Columbia River.	None	*1,864			
	Approximately 85.15 miles upstream of confluence with the Columbia River.	None	*1,866			
	Approximately 85.78 miles upstream of confluence with the Columbia River.	None	*1,868			

Maps are available for inspection at the Ferry County Planning Department, 146 North Clark, Suite 7, Republic, Washington.
 Send comments to The Honorable Ed F. Windson, Chairperson, Ferry County Commissioners, County Courthouse, 350 East Delaware, Republic, Washington 99166.

Washington	Stevens County, (Unincorporated Areas).	Kettle RiverReach 1 (Near Barstow).	Approximately 9.87 miles upstream of confluence with the Columbia River.	None	*1,306
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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Kettle River Reach 2 (Near Orient).	Approximately 10.5 miles upstream of confluence with the Columbia River.	None	*1,310
			Approximately 10.86 miles upstream of confluence with the Columbia River.	None	*1,312
		Kettle River Reach 3 (Near Laurier).	Approximately 18.62 miles upstream of confluence with the Columbia River.	None	*1,389
			Approximately 19.17 miles upstream of confluence with the Columbia River.	None	*1,392
			Approximately 27.24 miles upstream of confluence with the Columbia River.	None	*1,435
			Approximately 27.8 miles upstream of confluence with the Columbia River.	None	*1,440
			Approximately 28.26 miles upstream of confluence with the Columbia River.	None	*1,443

Maps are available for inspection at the Stevens County Planning Department, 260 South Oak Street, Colville, Washington. Send comments to The Honorable Alan L. Mack, Chairperson, Stevens County Commissioners, County Courthouse, 215 South Oak Street, Colville, Washington 99114.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")
 Dated: November 29, 1995.
 Richard T. Moore,
Associate Director for Mitigation.
 [FR Doc. 95-29706 Filed 12-5-95; 8:45 am]
BILLING CODE 6718-04-P

Radio, P.O. Box 572, Ripley, Mississippi 38663 (petitioner).
FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-173, adopted November 8, 1995, and released November 30, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.
 John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
 [FR Doc. 95-29656 Filed 12-5-95; 8:45 am]
BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95-173; RM-8725]

Radio Broadcasting Services; Calhoun City, MS

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by WKZU Radio, licensee of Station WKZU(FM), Channel 272A, Ripley, Mississippi, proposing the deletion of vacant Channel 272A at Calhoun City, Mississippi. Any party wishing to express an interest in Channel 272A at Calhoun City, Mississippi, should file their expression of interest by the initial comment deadline specified herein.

DATES: Comments must be filed on or before January 22, 1996, and reply comments on or before February 6, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harry Holliday, WKZU

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 675, 676, and 677

[Docket No. 95112820-5280-01; I.D. 111495A]

Groundfish Fishery of the Bering Sea and Aleutian Islands; Limited Access; Foreign Fishing; Proposed 1996 Initial Harvest Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 1996 initial specifications for groundfish and associated management measures; request for comments.

SUMMARY: NMFS proposes 1996 initial harvest specifications, prohibited species bycatch allowances, and associated measures for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to inform the public about proposed 1996 harvest specifications and associated management measures. The intended effect is to conserve and manage the groundfish resources in the BSAI and to

provide an opportunity for public participation in this process.

DATES: Comments must be submitted by January 4, 1996.

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 preliminary 1996 Stock Assessment and Fishery Evaluation (SAFE) report, dated September 1995, is available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99510-2252, 907-271-2817.

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Groundfish fisheries in the BSAI are governed by Federal Regulations (50 CFR 675) that implement the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). Other applicable regulations are found at 50 CFR 611.93 (Foreign Fishing) and 50 CFR part 676 (Limited Access Management of Federal Fisheries In and Off of Alaska) and 50 CFR part 677 (North Pacific Fisheries Research Plan). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the Magnuson Fishery Conservation and Management Act.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify for each calendar year the total allowable catch (TAC) for each target species and the "other species" category, the sum of which must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20(a)(2)). Regulations under § 675.20(a)(7)(i) further require NMFS to publish annually and solicit public comment on proposed annual TAC amounts, apportionments of each TAC, prohibited species catch (PSC) allowances, seasonal allowances of the pollock TAC, and seasonal allowances of the pollock Community Development Quota (CDQ) reserve. The specifications set forth in Tables 1-7 of this action satisfy these requirements. For 1996, the proposed sum of TAC amounts is 2.0 million mt. Under § 675.20(a)(7)(ii), NMFS will publish the final annual specifications for 1996 after considering: (1) Comments received within the comment period (see **DATES**), and (2) consultations with the Council at its December 1995 meeting.

The specified TAC amounts for each species are based on the best available biological and socioeconomic

information. At its September and December meetings, the Council, its Advisory Panel, and its Scientific and Statistical Committee (SSC), annually review biological information about the condition of groundfish stocks in the BSAI. This information is compiled by the Council's BSAI Groundfish Plan Team (Plan Team) and is presented in the SAFE Report. The Plan Team annually produces such a report as the first step in the process of specifying TAC amounts. The SAFE Report contains a review of the latest scientific analyses and estimates of each species' biomass, maximum sustainable yield (MSY), acceptable biological catch (ABC) and other biological parameters, as well as summaries of the ecosystem and the economic condition of groundfish fisheries off Alaska. A preliminary 1996 SAFE Report, dated September 1995, provides an update on status of stocks. These preliminary assessments will be updated based on biological survey work done during the summer of 1995. Assessments will be made available by the Plan Team in November 1995 and included in the final edition of the 1996 SAFE Report. Final ABC amounts for the 1996 fishing year will be based on the most recent stock assessments. The proposed ABC amounts adopted by the Council for the 1996 fishing year are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass.

Regulations at § 675.20(a)(7)(i) require that one-fourth of each proposed initial TAC (ITAC) amount and apportionment thereof, one-fourth of each PSC allowance established under § 675.21(b), and the first seasonal allowances of pollock become effective 0001 hours, A.l.t., January 1, on an interim basis and remain in effect until superseded by the final harvest specifications, which will be published in the Federal Register.

NMFS is publishing, in the Rules and Regulations section of this Federal Register issue, interim TAC specifications and apportionments thereof for the 1996 fishing year that will become available 0001 hours, Alaska local time, January 1, 1996, and remain in effect until superseded by the final 1996 harvest specifications.

Procedure for Estimating ABC

The Council bases its calculation of ABC on the definition contained in 50 CFR part 602—Guidelines For Fishery Management Plans (602 Guidelines). The 602 Guidelines (§ 602.11(e)(1)) state that:

ABC is a preliminary description of the acceptable harvest (or range of harvests) for a given stock or stock complex. Its derivation focuses on the status and dynamics of the stock, environmental conditions, other ecological factors, and prevailing technological characteristics of the fishery.

The 602 Guidelines also provide the Council with the flexibility needed to define overfishing appropriate to the individual stock or species characteristics, as long as it is defined in a way that allows the Council and NMFS to evaluate the condition of the stock relative to the definition (§ 602.11(c)). Application of the overfishing definition requires some flexibility because the amount of data for different stocks varies. The calculations used to derive preliminary overfishing levels for a given stock or stock complex are described in the preliminary 1996 SAFE Report.

Calculation of ABC varies among species, depending on the quality of available data and prior knowledge of a species' stock status. The Plan Team has adopted three steps for estimating ABC amounts. First, the exploitable biomass of a stock is estimated. Second, the ABC for a stock is calculated by multiplying an exploitation rate times the estimated exploitable biomass. Various exploitation rates or fishing mortality rates (F) may be used in this calculation, depending on the data available and the degree of risk the Plan Team is willing to accept. For example, the exploitation rate that would produce MSY (F_{MSY}) may be used when the stock is known to be in good condition, high in abundance, and not in danger of drastic decline. When more conservative stock management is desirable, a $F_{0.1}$ harvest strategy is used to determine an exploitation rate. This strategy determines a level of F at which the marginal increase in yield-per-recruit due to an increase in F is 10 percent of the marginal yield-per-recruit in a newly exploited fishery. Recruitment refers to the growth of juvenile fish into the adult or exploitable population. Generally, $F_{0.1}$ is a more conservative exploitation rate than F_{MSY} . Another alternative is to use historical exploitation rates when historical fishery data indicate that a stock is not affected adversely by such rates. A switch in harvest strategy from $F_{.35}$ to F =natural mortality rate (M) can be used when current maturity parameter estimates are unreliable. Finally, an empirical estimation of ABC based on historical catch levels may be used when information is insufficient to estimate the biomass of a stock. Details of overfishing, ABC, and other calculation procedures are discussed in

the preliminary 1996 SAFE Report. This report is available from the Council (see ADDRESSES).

The Plan Team's recommendations for preliminary ABC amounts for each species for 1996 and other biological data are provided in the preliminary 1996 SAFE Report. At its September 1995 meeting, the Council's SSC reviewed the Plan Team's preliminary recommendations for 1996 ABC amounts. The SSC concurred with the Plan Team's recommendations except for Aleutian Basin (Bogoslof) pollock and Greenland turbot. The SSC's revisions to the ABC amounts for these two species are discussed below.

Bogoslof Pollock. The Plan Team indicated in the preliminary 1996 SAFE Report that the current estimate of

biomass of Aleutian Basin pollock (1,020,000 mt) is conservative. This biomass estimate is based on the preliminary results from the 1995 hydroacoustic survey of the southeastern Aleutian Basin near Bogoslof Island, which indicated that the 1995 biomass is sustained almost entirely by 1988 and 1989 year classes. The Plan Team estimated an ABC for Bogoslof pollock of 265,000 mt using the biomass estimate and a target exploitation rate of 26 percent. However, the SSC used a more conservative exploitation strategy, based on a natural mortality rate of $M=0.2$ divided by 2 to derive an ABC of 102,000 mt.

Greenland Turbot. The Plan Team used the stock synthesis model to

estimate the ABC, which was updated with 1995 catch and survey data. The Plan Team maintained the 1996 ABC at the level recommended by the Plan Team last year (18,500 mt). However, the SSC recommended a continuation of the present 7,000 mt ABC for this species in recognition of continued poor recruitment and stock abundance levels since the early 1980's. The SSC's recommendation will be reevaluated in December, after an updated assessment analysis containing results from the bottom trawl survey for the 1996 estimate becomes available.

The Council adopted the ABC amounts recommended by the SSC (Table 1).

TABLE 1.—Proposed 1996 Acceptable Biological Catch (ABC), Proposed Total Allowable Catch (TAC), Initial TAC (ITAC), and Overfishing Levels (OFL) of Groundfish in the Bering Sea and Aleutian Islands Area (AI)^{1 2}

Species	ABC	TAC	ITAC=DAP/3/	OFL
Pollock:				
BS	1,250,000	1,250,000	1,062,500	1,500,000
AI	56,600	56,600	48,110	60,400
Bogoslof District	102,000	1,000	850	102,000
Pacific cod	328,000	250,000	212,500	390,000
Sablefish: ⁴				
BS	1,600	1,600	680	.....
AI	2,200	2,200	468	.....
Total	3,800	3,800	1,148	4,900
Atka mackerel:				
Western AI	71,600	41,520	35,292	.....
Central AI	19,300	11,200	9,520	.....
Eastern AI/BS	47,100	27,280	23,188	.....
Total	138,000	80,000	68,000	164,000
Yellowfin sole	277,000	190,000	161,500	319,000
Rock sole	347,000	60,000	51,000	388,000
Greenland turbot:				
BS	4,690	4,690	3,987	.....
AI	2,310	2,310	1,963	.....
Total	7,000	7,000	5,950	27,200
Arrowtooth flounder	113,000	10,227	8,693	138,000
Flathead sole	138,000	30,000	25,500	167,000
Other flatfish ⁵	117,000	19,540	16,609	137,000
Pacific ocean perch:				
BS	1,850	1,850	1,573	2,910
AI	10,500	10,500	8,925	15,900
Other red rockfish: ⁶ BS	1,400	1,260	1,070	1,400
Sharpchin/Northern AI	5,670	5,103	4,338	5,670
Shortraker/Rougheye AI	1,220	1,098	933	1,220
Other rockfish: ⁷				
BS	365	329	280	365
AI	770	693	589	770
Squid	3,110	1,000	850	3,110
Other Species ⁸	27,600	20,000	17,000	136,000
Totals	2,929,885	2,000,000	1,697,918	3,564,845

¹ Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the BS includes the Bogoslof District.

² Zero amounts of groundfish are specified for Joint Venture Processing and Total Allowable Level of Foreign Fishing.

³ Except for the portion of the sablefish TAC allocated to hook-and-line and pot gear, 0.15 of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.

⁴Twenty percent of the sablefish hook-and-line gear or pot gear final TAC amount will be reserved for use by Community Development Quota (CDQ) participants. (See § 676.24(b)) Regulations at § 675.20(c) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. The ITAC for sablefish reflected in Table 1 is for trawl gear only.

⁵"Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, and yellowfin sole.

⁶"Other red rockfish" includes shortraker, roughey, sharpchin, and northern.

⁷"Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shortraker, and roughey.

⁸"Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

Proposed TAC Specifications

The Council recommended adopting the Advisory Panel's recommendation for the 1996 BSAI TAC amounts, which equalled the 1995 TAC amounts and apportionments with one exception. The apportionment of the Atka mackerel TAC among the Aleutian Island districts and the Bering Sea was proposed to be revised as follows: Western Aleutians—41,520 mt (51.9 percent); Central Aleutians—11,200 (14.0 percent); and Eastern Aleutians and Bering Sea—27,280 mt (34.1 percent).

The 1,000 mt TAC proposed for pollock of the Bogoslof subarea was intended by the Council only to provide sufficient amounts of pollock to meet bycatch needs in other fisheries. The Council will consider updated information on the status of this resource at its December 1995 meeting to decide whether to allow a directed fishery under the final 1996 specifications.

The Council developed its TAC recommendations based on the preliminary ABC amounts as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 1.4–2.0 million mt. Each of the Council's recommended TAC amounts for 1996 is equal to or less than the final 1996 ABC for each species category. Therefore, NMFS finds that the recommended proposed TAC amounts are consistent with the biological condition of groundfish stocks. The preliminary ABC and TAC amounts, initial TAC (ITAC) amounts, overfishing levels, and initial apportionments of groundfish in the BSAI area for 1996 are given in Table 1 of this action. The apportionment of TAC amounts among fisheries and seasons is discussed below.

Apportionment of TAC

As required by § 675.20(a)(3) and § 675.20(a)(7)(i), each species' TAC initially is reduced by 15 percent, except the hook-and-line and pot gear allocation for sablefish. The sum of these 15-percent amounts is the reserve. The reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the "other species" category

during the year, providing that such reapportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing.

The ITAC for each target species and the "other species" category at the beginning of the year is apportioned between the domestic annual harvest (DAH) category and the total allowable level of foreign fishing (TALFF), if any. Each DAH amount is further apportioned between two categories of U.S. fishing vessels. The domestic annual processing (DAP) category includes U.S. vessels that process their catch on board or deliver it to U.S. fish processors. The joint venture processing (JVP) category includes U.S. fishing vessels working in joint ventures with foreign processing vessels authorized to receive catches in the exclusive economic zone.

In consultation with the Council, the initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director). Consistent with the final 1991–95 initial specifications, the Council recommended that 1996 DAP specifications be set equal to ITAC and that no groundfish be allocated to JVP and TALFF. In making this recommendation, the Council considered the capacity of DAP harvesting and processing operations and anticipated that 1996 DAP operations would harvest the full TAC specified for each BSAI groundfish species category. The proposed ABC amounts, proposed TAC and ITAC amounts, overfishing levels, and initial apportionments of groundfish in the BSAI area for 1996 are given in Table 1.

These proposed specifications are subject to change as a result of public comment, analysis of the current biological condition of the groundfish stocks, new information regarding the fishery, and consultation with the Council at its meeting scheduled for December 4–11, 1995.

Seasonal Allowances of Pollock TAC

Under § 675.20(a)(2)(ii), the TAC of pollock for each subarea or district of the BSAI area is divided, after subtraction of reserves (§ 675.20(a)(3)), into two seasonal allowances. The first allowance will be available for directed fishing from January 1 to April 15 (roe

season) and the second allowance will be available from August 15 through the end of the fishing year (non-roe season). In 1995, the opening of the pollock roe season was delayed for the offshore component fishery to January 26th (§ 675.23(e)(2)). On September 18, 1995, a notice of proposed rulemaking was published in the Federal Register (60 FR 48087) that, if approved by NMFS, would continue to authorize a delay of the offshore component roe fishery.

The Council recommended that the seasonal allowances for the Bering Sea pollock roe and non-roe seasons be specified at 45 percent and 55 percent of the ITAC amounts, respectively (Table 2). These seasonal apportionments are unchanged from 1995. As in past years, the pollock TAC amounts specified for the Aleutian Islands subarea and the Bogoslof District are not seasonally apportioned.

When specifying seasonal allowances of the pollock TAC, the Council and NMFS consider the following nine factors as specified in section 14.4.10 of the FMP:

1. Estimated monthly pollock catch and effort in prior years;
2. Expected changes in harvesting and processing capacity and associated pollock catch;
3. Current estimates of, and expected changes in, pollock biomass and stock conditions; conditions of marine mammal stocks; and biomass and stock conditions of species taken as bycatch in directed pollock fisheries;
4. Potential impacts of expected seasonal fishing for pollock on pollock stocks, marine mammals, and stocks and species taken as bycatch in directed pollock fisheries;
5. The need to obtain fishery-related data during all or part of the fishing year;
6. Effects on operating costs and gross revenues;
7. The need to spread fishing effort over the year, minimize gear conflicts, and allow participation by various elements of the groundfish fleet and other fisheries;
8. Potential allocative effects among users and indirect effects on coastal communities; and
9. Other biological and socioeconomic information that affects the consistency

of seasonal pollock harvests with the goals and objectives of the FMP.

The publication of the final 1995 initial groundfish and PSC specifications (60 FR 8479; February 14, 1995) summarizes Council findings with respect to each of the FMP considerations set forth above. At this time, the Council's findings are unchanged from those set forth for 1995.

Apportionment of the Pollock TAC to the Inshore and Offshore Components

Regulations at § 675.20(a)(2)(iii) require that the proposed pollock ITAC

amounts specified for the BSAI be allocated between the inshore and offshore processing components. These regulations are scheduled to expire at the end of 1995 although the Council has adopted Amendment 38 to the FMP and NMFS approved that amendment. Amendment 38 would continue apportionment of the pollock ITAC amounts between the inshore and offshore components. NMFS published a notice of proposed rulemaking in the Federal Register (60 FR 48087; September 18, 1995) that would extend

these regulations and a final rule will be issued shortly. Consequently, in these proposed specifications, the pollock ITAC is apportioned between the inshore and offshore sectors as specified in the proposed rule. For the purpose of this action, the inshore and offshore components would be apportioned 35 percent and 65 percent, respectively, of the pollock ITAC specified for each subarea or district (Table 2).

TABLE 2.—SEASONAL ALLOWANCES OF THE INSHORE AND OFFSHORE COMPONENT ALLOCATIONS OF POLLOCK TAC AMOUNTS ^{1 2}

Subarea	TAC	ITAC ³	Roe season	Non-roe season
Bering Sea: ^{4 5}				
Inshore		371,875	167,344	204,531
Offshore		690,625	310,781	379,844
	1,250,000	1,062,500	478,125	584,375
Aleutian Islands:				
Inshore		16,838	16,838	(⁶)
Offshore		31,272	31,272	(⁶)
	56,600	48,110	48,110	(⁶)
Bogoslof:				
Inshore		298	298	(⁶)
Offshore		552	552	(⁶)
	1,000	850	850	(⁶)

¹ TAC = total allowable catch.

² Based on an offshore component allocation of 0.65(TAC) and an inshore component allocation of 0.35(TAC).

³ ITAC = initial TAC = 0.85 of TAC.

⁴ January 1 through April 15—based on a 45/55 split (roe = 45 percent).

⁵ August 15 through December 31—based on a 45/55 split (non-roe = 55 percent).

⁶ Remainder.

Pollock CDQ Allocations

Regulations at § 675.20(a)(3)(ii) require that one-half of the pollock TAC placed in the reserve for each subarea or district, or 7.5 percent of each TAC, be assigned to a Community Development Quota (CDQ) reserve for each subarea or

district. These regulations expire on December 31, 1995, although the Council has adopted Amendment 38 to the FMP and NMFS has approved that amendment. Amendment 38 would extend the CDQ Program for 3 additional years. A notice of proposed rulemaking was published in the

Federal Register on September 18, 1995 (60 FR 48087) and a final rule is expected to be issued shortly. If the pollock TAC amount remains as specified in Table 1, the 1996 CDQ reserve amounts for each subarea would be as follows:

BSAI Subarea	Pollock CDQ	Roe season	Non-roe season
Bering Sea	93,750 mt	42,188 mt	51,562 mt.
Aleutian Islands	4,245 mt	4,245 mt	Remainder.
Bogoslof	75 mt	75 mt	Remainder.

Under the proposed regulations that would govern the CDQ program, NMFS may allocate the 1996 pollock CDQ reserves to eligible Western Alaska communities or groups of communities that have an approved Community Development Plan (CDP). The State of Alaska received six CDP applications pursuant to § 675.27 and State of Alaska regulations at 6 AAC 93. All six

applications were submitted in conformance with both sets of regulations and have been fully reviewed by the State and the Council. The NMFS-approved allocations of the 1996 CDQ reserve to the successful CDP recipients are expected to be published in the Federal Register prior to the 1996 fishing year.

Apportionment of Pollock TAC to the Nonpelagic Trawl Gear Fishery

Regulations at § 675.24(c)(2) authorize NMFS, in consultation with the Council, to limit the amount of pollock TAC that may be taken in the directed fishery for pollock using nonpelagic trawl gear. This authority is intended to reduce the amount of halibut and crab

bycatch that occurs in nonpelagic trawl operations.

The Council did not propose to limit the amount of pollock TAC that may be taken in the 1996 directed fishery for pollock by vessels using nonpelagic trawl gear. However, the Council will consider limiting the pollock TAC amounts that may be harvested by vessels using nonpelagic trawl gear at its December 1995 meeting, pending information on prohibited species bycatch amounts in the 1995 pelagic and nonpelagic trawl gear fisheries and an assessment of the effectiveness of regulations at § 675.7(n) to reduce halibut and crab bycatch in the pelagic trawl fishery.

Proposed Allocation of the Pacific Cod TAC

Under § 675.20(a)(2)(iv), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 44 percent to vessels using hook-and-line gear or pot gear, and 54 percent to vessels using trawl gear. At its September 1995 meeting, the Council proposed to roll over the 1995 seasonal apportionments of the portion of the Pacific cod TAC allocated to the hook-and-line and pot gear fisheries. The seasonal apportionments are intended to provide for the harvest of Pacific cod when flesh quality and market conditions are optimum and Pacific halibut bycatch

rates are low. The Council's recommendations for seasonal apportionments are set out in Table 3 and are unchanged from the percentages of seasonal apportionments specified for 1995 (60 FR 8479; February 14, 1995). These seasonal apportionments were based on: (1) Seasonal distribution of Pacific cod relative to prohibited species distributions, (2) expected variations in prohibited species bycatch rates experienced in the Pacific cod fisheries throughout the year, and (3) economic effects of any seasonal apportionment of Pacific cod on the hook-and-line and pot gear fisheries.

TABLE 3.—1996 GEAR SHARES OF THE BSAI PACIFIC COD INITIAL TAC

Gear	Percent of TAC	Share of ITAC (mt)	Seasonal Apportionment		
			Date	Percent	Amount (mt)
Jig	2	4,250	Jan. 1–Dec. 31	100	4,250
Hook-and-line	44	93,500	Jan. 1–Apr. 30	73	168,000
Pot gear .....	.....	.....	May 1–Aug. 31	19	18,000
			Sep. 1–Dec. 31	8	7,500
Trawl gear	54	114,750	Jan. 1–Dec. 31	100	114,750
Total	100	212,500			

¹ Any portion of the first seasonal apportionment that is not harvested by the end of the first season will become available on September 1, the beginning of the third season.

Sablefish Gear Allocation and Sablefish CDQ Allocations

Regulations under § 675.24(c)(1) require that sablefish TAC amounts for BSAI subareas be divided between trawl and hook-and-line/pot gear types. Gear

allocations of TAC amounts are specified in the following proportions: Bering Sea subarea: Trawl gear—50 percent; hook-and-line/pot gear—50 percent; and Aleutian Islands subarea: Trawl gear—25 percent; hook-and-line/pot gear—75 percent. In addition,

regulations under § 676.24(b) require NMFS to withhold 20 percent of the hook-and-line and pot gear sablefish allocation as a sablefish CDQ reserve. Gear allocations of sablefish TAC amounts and CDQ reserve are specified in Table 4.

TABLE 4.—1996 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TAC

Subarea	Gear	Percent of TAC (mt)	Share of TAC (mt)	Initial TAC (mt) ¹	CDQ Share
Bering Sea ²	Trawl	50	800	680	N/A
	Hook-and-line/pot gear ³	50	800	N/A	160
Total				680	.....
Aleutian Islands	Trawl	25	550	468	N/A
	Hook-and-line/pot gear ³	75	1,650	N/A	330
Total				468	490

¹ Except for the sablefish hook-and-line and pot gear allocation, 0.15 of TAC is apportioned to reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

² Includes Bogoslof District.

³ For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 0.20 of the allocated TAC is reserved for use by CDQ participants. Regulations at § 675.20(a)(3) do not provide for the establishment of an ITAC for sablefish hook-and-line or pot gear.

Allocation of PSC Limits for Crab, Halibut, and Herring

PSC limits of red king crab and *C. bairdi* Tanner crab in Bycatch Limitation Zones (50 CFR 675.2) of the BS subarea, and for Pacific halibut throughout the BSAI area are specified under § 675.21(a). At this time, the 1996 PSC limits are:

1. Zone 1 trawl fisheries, 200,000 red king crabs;
2. Zone 1 trawl fisheries, 1 million *C. bairdi* Tanner crabs;
3. Zone 2 trawl fisheries, 3 million *C. bairdi* Tanner crabs;
4. BSAI trawl fisheries, 3,775 mt mortality of Pacific halibut;
5. BSAI nontrawl fisheries, 900 mt mortality of Pacific halibut; and
6. BSAI trawl fisheries, 1,861 mt Pacific herring.

The PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. At this time, the best estimate of 1996 herring biomass is 186,000 mt. This amount was derived using 1994 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game (ADF&G). Therefore, the proposed herring PSC limit for 1996 is 1,861 mt. This value is subject to change, pending an updated forecast analysis of 1995 herring survey data that will be presented to the Council by the ADF&G during the Council's December 1995 meeting.

Regulations under § 675.21(b) authorize the apportionment of each PSC limit into PSC allowances for specified fishery categories. Regulations

at § 675.21(b)(1)(iii) specify seven fishery categories (midwater pollock, Greenland turbot/arrowtooth flounder/sablefish, rock sole/flathead sole/other flatfish, yellowfin sole, rockfish, Pacific cod, and bottom pollock/Atka mackerel/"other species"). Regulations at § 675.21(b)(2) authorize the apportionment of the nontrawl halibut PSC limit among three fishery categories (Pacific cod hook-and-line fishery, groundfish pot gear fishery, and other nontrawl fisheries). The PSC allowances for trawl and nontrawl are listed in Table 5. In general, the preliminary 1996 fishery bycatch allowances listed in Table 5 reflect the recommendations made to the Council by its Advisory Panel. These recommendations are unchanged from 1995, except for halibut in the Greenland turbot/arrowtooth flounder/sablefish category. A halibut bycatch allowance equal to zero is proposed for this fishery category in 1996. This means that directed fisheries for these species by vessels using trawl gear would be prohibited. This action is proposed for the following reasons.

First, the management of the halibut bycatch allowance specified for the Greenland turbot/arrowtooth flounder/sablefish fishery category in past years has proved very difficult. In 1995, NMFS had provided for only a 3-day fishery for Greenland turbot to maintain halibut bycatch mortality within the specified allowance of 120 mt. After the fishery had closed, NMFS determined that the halibut bycatch mortality experienced during this 3-day fishery totaled 282 mt, or 235 percent of the specified allowance.

Second, existing regulations allow Greenland turbot, sablefish, or arrowtooth to be retained as bycatch in other trawl fisheries provided that retained amounts do not exceed maximum retainable bycatch amounts as calculated under § 675.20(h). Last, the halibut bycatch mortality that had been apportioned to this fishery category in 1995 (120 mt) is proposed to be equally redistributed among the yellowfin sole, rock sole/flathead sole/other flatfish and the Pacific cod fishery categories. The intent of this action is to better optimize the amount of total groundfish catch harvested under the halibut PSC limit established for the trawl gear fisheries.

The proposed apportionments of the PSC limits among specified trawl and nontrawl fisheries were based on last year's final recommendations that incorporated 1993 and 1994 bycatch amounts, anticipated 1996 harvest of groundfish by trawl gear and fixed gear, and assumed halibut mortality rates in the different groundfish fisheries based on analyses of 1993-1994 observer data.

Regulations at § 675.21(b)(2) authorize exemption of specified nontrawl fisheries from the halibut PSC limit. As in 1995, the Council proposes to exempt pot gear and the hook-and-line sablefish fishery from the nontrawl halibut limit for 1996. The Council proposed this exemption because of the low halibut bycatch mortality experienced in the pot gear fisheries (7 mt in 1995) and because of the 1995 implementation of the sablefish and halibut IFQ program, which would allow legal-sized halibut to be retained in the sablefish fishery.

TABLE 5.—PRELIMINARY 1996 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES

Trawl fisheries	Zone 1	Zone 2	BSAI-wide
Red king crab, number of animals:			
yellowfin sole	50,000		
rcksol/otherflat/flathead sole	10,000		
rockfish	0		
turb/arrow/sab/rockfish ¹	0		
Pacific cod	10,000		
plck/Atka/other ²	30,000		
Total	200,000		
<i>C. bairdi</i> Tanner crab, number of animals:			
yellowfin sole	225,000	1,525,000	
rcksol/oth.flat/flathead sole	475,000	510,000	
turb/arrow/sabl	0	5,000	
rockfish	0	10,000	
Pacific cod	225,000	260,000	
plck/Atka/other	75,000	690,000	
Total	1,000,000	3,000,000	
Pacific halibut, mortality (mt):			
yellowfin sole			790
rcksol/oth.flat			730
turb/arrow/sabl			0

TABLE 5.—PRELIMINARY 1996 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES—Continued

Trawl fisheries	Zone 1	Zone 2	BSAI-wide
rockfish			110
Pacific cod			1,590
plck/Atka/other			555
Total			3,775
Pacific herring, mt:			
midwater pollock			1,345
yellowfin sole			315
rcksol/oth.flat			0
turb/arrow/sabl			0
rockfish			8
Pacific cod			24
plck/Atka/other ³			169
Total			1,861
Nontrawl fisheries:			
Pacific halibut, mortality (mt)			725
Pacific cod Hook-and-line			175
Other nontrawl:			
Sablefish hook-and-line gear			4
Groundfish pot gear			4
Groundfish jig gear			4
Total			900

¹ Greenland turbot, arrowtooth flounder, and sablefish fishery category.
² Pollock, Atka mackerel, and "other species" fishery category.
³ Pollock other than midwater pollock, Atka mackerel, and "other species" fishery category.
⁴ Exempt.

At its September 1995 meeting, the Council recommended that the proposed halibut bycatch allowances listed in Table 5 be apportioned seasonally as shown in Table 6. The prohibited species bycatch allowances and the seasonal apportionment of those allowances will be subject to change at

the December 1995 Council meeting, pending public comments, year-to-date information on bycatch performance and updated information on anticipated fishing patterns in 1996.

For purposes of monitoring the fishery halibut bycatch mortality allowances specified in Table 6, the Regional Director will use observed

halibut bycatch rates and reported and observed groundfish catch to project when a fishery's halibut bycatch mortality allowance is reached. The Regional Director monitors the fishery bycatch mortality allowances using assumed mortality rates that are based on the best information available.

TABLE 6.—PROPOSED SEASONAL APPORTIONMENTS OF THE 1996 PACIFIC HALIBUT BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES

	Seasonal bycatch allowances (mt halibut)
Fishery Trawl Gear:	
Yellowfin sole:	
Jan. 20–Jul. 31	295
Aug. 1–Dec. 31	495
Total	790
Rock sole/flathead sole/"other flatfish":	
Jan. 20–Mar. 31	453
Apr. 1–Jun. 30	190
Jul. 1–Dec. 31	87
Total	730
Turbot/arrowtooth flounder/sablefish:	
Total	0
Rockfish:	
Jan. 20–Mar. 31	30
Apr. 1–Jun. 30	60
Jul. 1–Dec. 31	20
Total	110

TABLE 6.—PROPOSED SEASONAL APPORTIONMENTS OF THE 1996 PACIFIC HALIBUT BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES—Continued

	Seasonal bycatch allowances (mt halibut)
Pacific cod:	
Jan. 20–Jun. 30	1,487
Jul. 1–Dec. 31	103
Total	1,590
Pollock/Atka mackerel/"other species":	
Jan. 20–Apr. 15	455
Apr. 16–Dec. 31	100
Total	555
Total Trawl Halibut Mortality	3,775
Fishery Nontrawl Gear:	
Pacific cod:	
Jan. 1–Apr. 30	475
May. 1–Aug. 31	40
Sep. 1–Dec. 31	210
Total	725
Other nontrawl	175
Sablefish hook-and-line	(1)
Groundfish pot	(1)
Groundfish jig gear	(1)
Total Nontrawl Halibut Mortality	900

¹ Exempt.

Preliminary assumed halibut mortality rates recommended by the International Pacific Halibut Commission (IPHC) for the 1996 BSAI groundfish fisheries are listed in Table 7. These mortality rates are based on an average of mortality rates determined from NMFS observer data collected during 1993 and 1994, except for the BSAI trawl arrowtooth flounder fishery, which is based on data from 1991 and 1992, the 2 most recent years the fishery operated. The Council proposed that revised halibut discard mortality rates recommended by the IPHC be adopted for purposes of monitoring halibut bycatch mortality limits established for the 1996 groundfish fisheries.

For most fisheries, the 1993–94 averages, on which the 1996 recommendations are based, are somewhat lower than the actual rates used in 1995. After the December 1995 Council meeting, NMFS will consider all available data and public comments and will publish preseason assumed halibut mortality rates in the Federal Register as part of the final 1996 initial specifications of groundfish TAC amounts. However, the Council noted that the sablefish hook-and-line halibut fishery bycatch mortality rate is based on the fishery before the IFQ program was initiated and that the IPHC may have new data at the December 1995

meeting that would help reassess the halibut mortality rate in this fishery.

TABLE 7.—ASSUMED PACIFIC HALIBUT MORTALITY RATES PROPOSED FOR THE BSAI FISHERIES DURING 1996

	Assumed mortality (percent)
Hook-and-Line Gear Fisheries:	
BSAI sablefish	27
BSAI rockfish	24
BSAI Greenland turbot	18
BSAI Pacific cod	13
Trawl Gear Fisheries:	
midwater pollock	86
Rockfish	77
bottom pollock	77
Pacific cod	77
yellowfin sole	74
rock sole/flathead sole/other flatfish	74
Atka mackerel	61
Greenland turbot	51
arrowtooth	49
Pot Gear Fisheries—Pacific cod	7

Groundfish PSC Limits

Section 675.20(a)(6) authorizes NMFS to specify PSC limits for groundfish species or species groups for which the TAC will be completely harvested by domestic fisheries. These PSC limits

apply only to JVP or TALFF fisheries. At this time, no groundfish are allocated to either JVP or TALFF and specifications of groundfish PSC limits are unnecessary.

Classification

This action is authorized under 50 CFR 611.93(b), 675.20, and 676.20 and is exempt from review under E.O. 12866.

A draft environmental assessment (EA) on the allowable harvest levels set forth in the final 1996 SAFE Report will be available for public review at the December 4–8, 1995, Council meeting. After the December meeting, a final EA will be prepared on the final 1996 TAC amounts recommended by the Council.

Consultation pursuant to section 7 of the Endangered Species Act has been initiated for the 1996 BSAI initial specifications.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 1, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–29722 Filed 12–5–95; 8:45 am]

BILLING CODE 3510–22–W

Notices

Federal Register

Vol. 60, No. 234

Wednesday, December 6, 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

Food and Consumer Service

Collection Requirements Submitted for Public Comment and Recommendations: WIC Participant and Program Characteristics Study, 1996

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intention to request OMB review of the WIC Participant and Program Characteristics Study, 1996.

DATES: Comments on this notice must be received by February 5, 1996.

ADDRESSES: Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to: Michael E. Fishman, Acting Director, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Michael E. Fishman, (703) 305-2117.

SUPPLEMENTARY INFORMATION:

Title: WIC Participant and Program Characteristics, 1996.

OMB Number: Not yet assigned

Expiration Date of Approval: March 31, 1997.

Type of Request: New collection of information.

Abstract: Subsection (d)(4) of Section 17 of The Child Nutrition Act of 1966,

as amended, the authorizing statute for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), requires biennial reports to Congress on "(A) the income and nutritional risk characteristics of participants in the program; (B) participation in the program by members of families of migrant farmworkers; and (C) such other matters relating to participation in the program as the Secretary considers appropriate."

FCS has completed five previous studies of WIC participant and program characteristics in 1984 (PC84), 1988 (PC88), 1990 (PC90), 1992 (PC92), and 1994 (PC94). To minimize the burden on state agencies, FCS and the National Association of WIC Directors (NAWD) collaborated on the development of a prototype reporting system which allows the acquisition of all participant data through the automated transfer of an agreed upon set of data elements, known as "the Minimum Data Set (MDS)."

FCS also gathers state-level program data as part of the Participant Characteristics data collection process. The "Summary of State Programs" mail questionnaire gathers information on State characteristics such as policies and eligibility standards in order to support analyses at the participant level. FCS is adding a data collection component—a mail survey of a representative sample of WIC local agencies. This survey will elicit information on selected features of WIC service delivery sites. FCS will use this information to prepare the biennial report to Congress and for ongoing program management.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes for the State Program Characteristics Survey; and 45 minutes for the local agency mail survey.

Respondents: For the State Program Characteristics Survey, the respondents are State WIC Directors. For the WIC local agency survey, the respondents are WIC local agency directors.

Estimated Number of Respondents: For the the State Program Characteristics Survey, 84 respondents are estimated. For the local agency mail survey, 350 respondents are estimated.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 284 hours.

Copies of this information collection can be obtained from Denise Thomas, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Dated: November 22, 1995.

George A. Braley,
Acting Administrator, Food and Consumer Service.

[FR Doc. 95-29750 Filed 12-5-95; 8:45 am]

BILLING CODE 3410-30-U

Forest Service

Extension of Currently Approved Information Collection for State and Private Forestry Accomplishment Reporting

AGENCY: Forest Service, USDA.

ACTION: Notice of intent; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to extend a currently approved information collection used to assess the accomplishments of agency State and private forestry cooperative programs with States and local governments.

DATES: Comments must be submitted on or before February 5, 1996.

ADDRESSES: All comments should be addressed to: Larry Yarger, Office of the Deputy Chief for State and Private Forestry, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Larry Yarger, State and Private Forestry Deputy Area, at (202) 205-1290.

SUPPLEMENTARY INFORMATION:

Description of Forms

The following information describes the forms to be extended:

Titles—National Forms:
FS-3100-8, Annual Wildfire Summary Report.

FS-3200-6, Cooperative Forestry Accomplishment Report.

FS-3400-5, Forest Pest Management Accomplishment Report.

FS-3500-5, Flood Prevention and Small Watershed Programs.

FS-3600-2, Resource Conservation and Development Accomplishment Report.

OMB Number: 0596-0025.

Expiration Date of Approval: April 30, 1996.

Type of Request: Extension of a currently approved information collection.

Abstract: The Forest Service needs this collection of information on the cooperative programs with State and local governments to: (a) provide information to Congress on accomplishments from the use of appropriated funds, (b) provided information to better manage these programs, (c) determine minority participation in the programs, and (d) meet requirements of section 12 of Pub. L. 95-313, the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 1606), which requires adequate information to implement oversight responsibility and prove accountability for expenditures and activities under the Act.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.04 hours per response.

Type of Respondents: Local and State governments.

Estimated Number of Respondents: 53.

Estimated of Responses per Respondent: 5.45.

Estimated Total Annual Burden on Respondents: 589 hours.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information.

Use of Comments

All comments received in response to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 1, 1995.

Jack Ward Thomas,
Chief.

[FR Doc. 95-29732 Filed 12-5-95; 8:45 am]

BILLING CODE 3410-11-M

Extension and Revision of Currently Approved Information Collection for Recreation Customer and Use Survey Techniques

AGENCY: Forest Service, USDA.

ACTION: Notice of intent; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to request an extension and revision of a currently approved information collection for customer and use survey techniques for operations and management related to recreation use of natural resources. The revision will add questions to elicit information for experimental research linking recreation users' stated and actual preferences and behavior.

DATES: Comments must be received in writing on or before February 5, 1996.

ADDRESSES: All comments should be addressed to: J.M. Bowker, Principal Investigator, Forest Service, USDA, Southern Research Station, 320 Green St., Athens, GA 30602.

FOR FURTHER INFORMATION CONTACT: J.M. Bowker, Outdoor Recreation and Wilderness Assessment, at (706) 546-2451.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

The following describes the information collection to be extended and revised:

Title: USDA Forest Service Customer and Use Survey Techniques for Recreation Operations, Management, Evaluation and Research.

OMB Number: 0596-0110.

Expiration Date of Approval: June 30, 1996.

Type of Request: Extension of a previously approved information collection and revision to include additional questions on contingent behavior.

Abstract: The data collected will be used by Government researchers to test and develop methods to assess the value of natural resources to recreational users by exploring the linkages between their actual and stated behavior. The data will be collected individually through questionnaires and respondent cards containing seven questions about intended recreation behavior. Data to be gathered in this information collection is not available from other sources.

Estimate of Burden: Public reporting burden for this collection of information is estimated to vary from 3 to 7 minutes per response.

Type of Respondents: Individuals participating in on-site recreation activities.

Estimated Number of Respondents: 900.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 75 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of this agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 1, 1995.

Jack Ward Thomas,

Chief.

[FR Doc. 95-29733 Filed 12-5-95; 8:45 am]

BILLING CODE 3410-11-M

Southwestern Region: Arizona, New Mexico, West Texas and Oklahoma; Notice To Extend Public Comment Period to January 12, 1996; Final Environmental Impact Statement for Amendment of Forest Plans in the Southwestern Region

AGENCY: Forest Service, USDA.

ACTION: Notice to Extend Public Comment Period, Final Environmental Impact Statement [FEIS].

SUMMARY: The Southwestern Region of the Forest Service published a notice of availability for public comment on a final environmental impact statement in the Federal Register (Vol. 60, No. 213, pages 55841) on November 3, 1995. This notice is issued to extend the comment period from December 4, 1995 to January 12, 1996 regarding that FEIS. The FEIS concerns Amendment of Forest Plans in the Southwestern Region, and implementation, standards and guidelines for Northern Goshawk and Mexican Spotted Owl.

EFFECTIVE DATE: This notice is effective December 6, 1995.

RESPONSIBLE OFFICIAL: The Regional Forester, Southwestern Region, is the responsible official for decisions that affect Southwestern Region Forest Land and Resource Management Plans.

FOR FURTHER INFORMATION CONTACT: Director of Ecosystem Management Planning, Arthur S. Briggs,

Southwestern Regional Office, (505)
842-3210.

Dated: November 29, 1995.

Milo Larson,

*Acting Deputy Regional Forester,
Southwestern Region.*

[FR Doc. 95-29714 Filed 12-5-95; 8:45 am]

BILLING CODE 3410-11-M

Rural Housing Service

Housing Preservation Grants

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. The HPG program is a grant program which provides qualified public agencies, private nonprofit organizations, and other eligible entities grant funds to assist very low- and low-income homeowners repair and rehabilitate their homes in rural areas, and to assist rental property owners and cooperative housing complexes repair and rehabilitate their units if they agree to make such units available to low- and very low-income persons. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart N, which requires the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide eligible organizations notice of these dates.

DATES: RHS hereby announces that it will begin receiving preapplications on January 2, 1996. The closing date for acceptance by RHS of preapplications is April 1, 1996.

This period will be the only time during the current fiscal year that RHS accepts preapplications. Preapplications must be received by or postmarked on or before this date.

ADDRESSES: Submit preapplications to Rural Economic and Community Development (RECD) servicing offices for the HPG program; applicants must contact their RECD State Office for this information.

FOR FURTHER INFORMATION CONTACT:

Sue M. Harris-Green, Senior Loan Officer, Multi-Family Housing Processing Division, RHS, USDA, Room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 720-1606. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: 7 CFR part 1944, subpart N provides details on

what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact the RECD State Office to receive further information and copies of the preapplication package. Eligible entities for these competitively awarded grants include State and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible entities.

This program is listed in the Catalog of Federal Domestic assistance under No. 10.433, Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V; 48 FR 29115, June 24, 1983). Applicants are also referred to 7 CFR part 1944, sections 1944.674 and 1944.676 (d) and (e) for specific guidance on these requirements relative to the HPG program.

The funding instrument for the HPG program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been set, although based on fiscal year (FY) 1996 fund availability, the Agency anticipates that the average grant will be \$75,000 for a 1-year proposal. For FY 96, \$11 million is available and has been distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, "Methodology and Formulas for Allocation of Loan and Grant Funds."

Decisions on funding will be based on the preapplications, and notices of action on the preapplications should be made no earlier than 66 days prior to the closing date.

Dated: November 28, 1995.

Maureen Kennedy,

Administrator, Rural Housing Service.

[FR Doc. 95-29694 Filed 12-5-95; 8:45 am]

BILLING CODE 3410-07-U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; James L. Stephens

In the matter of: James L. Stephens, President, Weisser's Sporting Goods, 1018 National City Boulevard, National City, California 92050, with an address at 16208 Orchard Bend Road, Poway, California 92064, Respondent.

Order

The Office of Export Enforcement,
Bureau of Export Administration,

United States Department of Commerce (hereinafter, the "Department", having notified James L. Stephens, in his capacity as president of Weisser's Sporting Goods (hereinafter, "Stephens"), of its intention to initiate an administrative proceeding against him pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1995)) (hereinafter, the "Act"),¹ and Part 788 of the Export Administration Regulations (currently codified at 15 CFR Parts 768-799 (1995)) (hereinafter, the "Regulations"),² based on allegations that:

1. Between mid-1990 and early 1992, Stephens conspired with Karl Cording, individually and doing business as A. Rosenthal (PTY) Ltd., Windhoek, Namibia, with offices in Linden, South Africa and Cape Town, South Africa, and Ian Ace, manager of A. Rosenthal, Cape Town, South Africa, to export U.S.-origin shotguns, from the United States to Namibia and South Africa, without applying for and obtaining from the Department the validated export licenses that the Stephens knew were required by Section 772.1(b) of the Regulations, in violation of Section 787.3(b) of the Regulations;

2. In furtherance of the conspiracy described above, on two separate occasions on or about November 27, 1990, Stephens exported U.S.-origin shotguns, from the United States to Namibia and South Africa, without obtaining from the Department the validated export licenses Stephens knew or had reason to know were required by Section 772.1(b) of the Regulations, in violation of Sections 787.4(a) and 787.6 of the Regulations; and

3. In furtherance of the conspiracy described above, on two separate occasions on or about November 27, 1990, Stephens made false or misleading representations of material fact to a U.S. agency in connection with the preparation, submission, or use of export control documents, in violation of Section 787.5(a) of the Regulations; and

¹ The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1994)) (hereinafter "IEEPA"). Executive Order 12924 was extended by Presidential Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

² The Regulations governing the violations at issue are found in the 1990 version of the Code of Federal Regulations. Those Regulations are codified at 15 CFR Parts 768-799 (1990). Between October 1, 1990 and March 27, 1993, the Regulations were continued in effect by Executive Order No. 12730 (55 FR 40373, October 2, 1990), issued pursuant to IEEPA.

The Department and Stephens having entered into a Consent Agreement whereby the Department and Stephens have agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Consent Agreement having been approved by me;

It is therefore ordered,

First, that a civil penalty of \$60,000 shall be assessed against Stephens, \$10,000 of which shall be paid to the Department on or before January 5, 1996, and the remaining \$50,000 to be paid in four equal installments of \$12,500 each, the first of which is due on or before March 29, 1996; the second, on or before June 28, 1996; the third, on or before September 27, 1996; and the fourth, on or before December 27, 1996. Payment shall be made in a manner specified in the attached instructions.

Second, James L. Stephens, President, Weisser's Sporting Goods, 1018 National City Boulevard, National City, California 92050, with an address at 16208 Orchard Bend Road, Poway, California 92064, shall, for a period of 15 years from the date of entry of this Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States and subject to the Regulations.

A. All outstanding individual validated export licenses in which Stevens appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all Stevens's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) as a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using or disposing of, in whole or in part, any commodities

or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

C. After notice and opportunity for comment as provided in Section 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Stephens by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

D. As provided by Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, the proposed Charging Letter, the Consent Agreement, and this Order shall be made available to the public, and this Order shall be published in the Federal Register.

This order is effective immediately.

Dated: November 27, 1995.

John Despres,

Assistant Secretary for Export Enforcement.
[FR Doc. 95-29683 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-580-812]

Court Decision and Suspension of Liquidation: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 6, 1995.

FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482-3464.

SUMMARY: On October 27, 1995, in the case of Micron Technologies, Inc. v. United States, Cons. Ct. No. 93-06-00318, Slip Op. 95-175 (Micron), the United States Court of International Trade (the Court) affirmed the Department of Commerce's (the Department's) results of redetermination on remand of the Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea. Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (Timken), the Department will not order the liquidation of the subject merchandise entered or withdrawn from warehouse from consumption prior to a "conclusive" decision in this case.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1993, the Department published its *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea* (57 FR 15467). On May 10, 1993, the Department published its *Antidumping Order and Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea* (58 FR 27520).

Subsequent to the Department's final determination, Micron Technologies (the petitioner) and the three respondents, Samsung Electronics Co., Ltd. and Samsung Semiconductor, Inc. (collectively Samsung), LG Semicon Co., Ltd. and LG Semicon America, Inc. (collectively Semicon and formally

Goldstar), and Hyundai Electronics Industries Co., Ltd. and Hyundai Electronics America (collectively Hyundai), filed lawsuits with the Court challenging this determination. Thereafter, the Court issued an Order and Opinion dated June 12, 1995, in *Micron Technologies, Inc. v. United States*, Cons. Ct. No. 93-06-00318, Slip Op. 95-107, remanding six issues to the Department. The Court instructed the Department to: (1) recalculate respondents' cost of production by allocating research and development (R&D) costs on a product-specific basis; (2) use amortized rather than current R&D expenses in its calculations; (3) reopen the record in order to afford Hyundai and Samsung an opportunity to present complete and actual fixed asset data and use this data to allocate interest expenses; (4) recalculate Hyundai's lag period; (5) recalculate Semicon's production costs without reclassifying Semicon's capitalized costs of facility construction and testing as costs of production; and (6) reexamine its conclusion that foreign currency translation losses of Samsung and Semicon are related to production of subject merchandise.

The Department filed its remand results on August 24, 1995. In the remand results, the Department: (1) recalculated respondents— cost of production by allocating R&D on a product-specific basis; (2) used amortized rather than current R&D expenses in its calculations; (3) reopened the record to afford Hyundai and Samsung an opportunity to introduce actual data regarding semiconductor fixed assets, and used such data in its allocation of interest expense; (4) recalculated Hyundai's lag periods utilizing the same methodology that it employed for Samsung and Semicon; (5) determined a new lag period for Hyundai's model HY514400 which accurately matches costs to the sales in question; (6) calculated Semicon's production costs for certain DRAMs without reclassifying as costs of production Semicon's capitalized costs of facility construction and testing; and (7) identified what evidence on the record supports the conclusion that the translation losses of Samsung and Semicon are related to production of the subject merchandise and, having determined that there is sufficient evidence on the record to support such a conclusion, included translation losses in the calculation of COP for Samsung and Semicon.

On October 27, 1995, the Court sustained the Department's remand results. See *Micron Technologies, Inc. v. United States*, Cons. Ct. No. 93-06-

00318, Slip Op. 95-175 (CIT October 27, 1995).

Suspension of Liquidation

In its decision in *Timken*, the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish notice of a decision of the Court or Federal Circuit which is "not in harmony" with the Department's determination. Publication of this notice fulfills this obligation. The Federal Circuit also held that in such a case, the Department must suspend liquidation until there is a "conclusive" decision in the action. A "conclusive" decision cannot be reached until the opportunity to appeal expires or any appeal is decided by the Federal Circuit. Therefore, the Department will continue to suspend liquidation pending the expiration of the period to appeal or pending a final decision of the Federal Circuit if Micron is appealed.

Dated: November 29, 1995.
Susan G. Esserman,
Assistant Secretary for Import Administration.
[FR Doc. 95-29583 Filed 12-5-95; 8:45 am]
BILLING CODE 3510-DS-P

[A-588-054]

Tapered Roller Bearings, Four Inches or Less In Outside Diameter, and Components Thereof, From Japan; Amendment to the Final Results of Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

SUMMARY: On June 15, 1995, the United States Court of International Trade (CIT) remanded the Department of Commerce's (the Department's) redetermination on remand of the final results of administrative review of the antidumping finding on tapered roller bearings, four inches or less in outside diameter, and certain components thereof (TRBs) from Japan (41 FR 34974, August 18, 1976) (*Koyo Seiko Co., Ltd. and Koyo Corp. of U.S.A. v. United States and NSK Ltd. And NSK Corp., v. United States* (Slip Op. 95-111 (June 15, 1995)) (*Koyo*)). The CIT ordered the Department to correct two computer programming errors in the calculation of margins for Koyo Seiko Co., Ltd., and, following the corrections, affirmed the redetermination in all respects. The results covered the period April 1, 1974, through March 31, 1979, for TRBs produced by Koyo Seiko Co., Ltd., and distributed by its subsidiary, Koyo Corporation of U.S.A. (collectively, Koyo), and April 1, 1974 through July

31, 1980, for TRBs produced by NSK Ltd., and distributed by its subsidiary, NSK Corporation (collectively, NSK).
EFFECTIVE DATE: June 25, 1995.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482-5253.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1995, the CIT issued an order remanding to the Department the redetermination on remand of the final results of administrative review of the antidumping finding on TRBs from Japan to correct two computer programming errors, and affirmed the redetermination in all other respects.

The Department's final results of review covering Koyo for the period April 1, 1974 through March 31, 1979, and NSK for the period April 1, 1974 through July 31, 1980, were published on June 1, 1990 (55 FR 22369). Koyo, NSK, and petitioner in this proceeding, the Timken Company (Timken), challenged those results to the CIT. The CIT issued four remand orders covering the review: on issues concerning Koyo in *Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. v. United States* (Slip Op. 92-72 (May 15, 1992) (*KCUSA*)); on issues concerning NSK in *NSK Ltd. v. United States* (Slip Op. 92-79 (May 21, 1992) (*NSK*)); on issues relating to both Koyo and NSK in *The Timken Company v. United States* (Slip Op. 92-83 (May 22, 1992) (*Timken*)); and finally in *Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. v. United States* (Slip Op. 92-139 (August 21, 1992) (*Koyo Cost*)) the CIT allowed the Department to conduct an investigation of sales made below the cost of production by Koyo.

In *KCUSA* and *NSK* the CIT ordered the Department to recalculate margins for entries pursuant to the three-criteria methodology for determining "such or similar" merchandise; to examine all possible similar home market models of approximately equal commercial value to calculate foreign market value (FMV); to include Koyo's data for net weights of certain TRBs in the calculation of U.S. customs duties; to add only thirty days to Koyo's shipping time when calculating an adjustment for U.S. inventory expenses; and to liquidate Koyo's entries between April 1, 1974 and September 30, 1977, and NSK's entries between June 6, 1974 and July 31, 1977, according to master lists

prepared by the Treasury Department (Treasury). In addition, in *Timken* the CIT remanded the same final results to the Department to use the verified per-unit export department expenses as best information available when calculating the adjustment to exporter's sales price (ESP) for Koyo's export selling expenses.

In *Koyo Cost* the CIT allowed Timken to submit supplemental sales-below-cost information and directed the Department to consider the supplemental information in order to determine whether the dumping margins for the April 1, 1978 to March 31, 1979 period should be calculated without reference to the investigation of below-cost-of-production sales. That allegation, and the Department's finding of sales below the cost of production, were not relevant to time periods prior to April 1, 1978. Consequently, no investigation of sales made below the cost of production was conducted for those periods.

The Department submitted its remanded results for NSK pursuant to *NSK* and *Timken* to the CIT in August 1992. Results for Koyo pursuant to *KCUSA*, *Timken*, and *Koyo Cost* were submitted to the CIT in October 1992. The CIT affirmed those results in their entirety on March 4, 1993 (Slip Op. 93-28). Koyo, NSK, and Timken appealed various issues in those orders to the United States Court of Appeals for the Federal Circuit (the Federal Circuit). In

its ruling of March 28, 1994 (*Koyo Seiko Co., Ltd. and Koyo Corporation USA. v. United States* (93-1310, 1341), and *NSK Ltd. And NSK Corporation v. United States* (93-1311), (*CAFC decision*)), the Federal Circuit affirmed the CIT's decision in *Koyo Cost* to allow the Department to conduct an investigation of sales made below the cost of production by Koyo. However, the Federal Circuit reversed the decision of the CIT in *KCUSA* and *NSK* to liquidate TRB entries made by Koyo between April 1, 1974 and September 30, 1977, and TRB entries made by NSK between June 6, 1974 and March 31, 1978, according to Treasury master lists. Pursuant to the *CAFC decision*, the CIT ordered a redetermination of the final dumping margins for 1974-1978 TRB entries (*Koyo Seiko Co., v. United States and NSK Ltd. v. United States*, Slip Op. 94-75 (May 10, 1994) (*Koyo/NSK*)). The *Koyo/NSK* order stipulated that the margins be determined based upon the complete record of the administration review conducted by the Department and on the CIT's prior rulings in *KCUSA*, *NSK*, and *Timken*. No other issues were raised before the Federal Circuit.

The Department submitted its results pursuant to *Koyo/NSK* on July 18, 1994. On June 15, 1995, the CIT issued its decision in *Koyo* remanding those results to the Department to correct two computer programming errors alleged by Timken and affirming the

redetermination in all other respects. The margin calculations on entries made by NSK from April 1, 1978, through July 31, 1980, and by Koyo from October 1, 1977, through March 31, 1979, were not challenged in these actions, and were affirmed by the CIT. Consequently, those calculations remain unchanged from the Department's August 1992 and October 1992 remanded results.

The Department has addressed the two programming errors identified by the CIT in *Koyo*. Based upon an examination of the record in the final results of review we determined that there was no programming or clerical error regarding model matching. The Department reviewed and emended the programming error regarding exchange rates. We disclosed the results to Koyo and Timken consistent with 19 CFR 353.28. We received no comments on our results from either party. The Department is therefore amending the final results of the administrative review of the antidumping finding on tapered roller bearings, four inches or less in outside diameter, and certain components thereof from Japan to reflect the amended margins calculated for Koyo and NSK in the Department's redetermination on remand, and affirmed by the CIT.

The Department will issue liquidation instructions to the Customs Service based on the following amended margins:

Firm	Period	Percent margin
Koyo	04/01/1974 to 07/31/1976	20.56
	08/01/1976 to 09/30/1977	5.99
	10/01/1977 to 93/31/1978	24.64
NSK	04/01/1978 to 03/31/1979	17.96
	06/06/1974 to 06/30/1976	17.42
	07/01/1976 to 07/31/1977	17.42
	08/01/1977 to 03/31/1978	18.63
	04/01/1978 to 07/31/1978	39.60
	08/01/1978 to 07/31/1979	19.75
	08/01/1979 to 07/31/1980	9.82

Dated: November 22, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95-29727 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Notice of Final Results of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from the American Chain Association, the petitioner in this proceeding, the Department of Commerce (the Department) has conducted an administrative review of the antidumping finding on roller chain,

other than bicycle, from Japan. The review covers four manufacturers/exporters of this merchandise to the United States during the period of April 1, 1992, through March 31, 1993.

We gave interested parties the opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have revised the results from those presented in our preliminary results.

EFFECTIVE DATE: December 6, 1995.

FOR FURTHER INFORMATION CONTACT: Greg Thompson or Donna Berg, Office of Antidumping Investigations, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3003 or (202) 482-0114, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1995, the Department published in the Federal Register the preliminary results of its 1992-1993 administrative review of the antidumping duty order on Roller Chain, Other Than Bicycle, from Japan (60 FR 43769). The four manufacturers/exporters reviewed are Izumi Chain Manufacturing Co., Ltd. (Izumi), R.K. Excel (Excel), Hitachi Metals Techno Ltd. (Hitachi), and Pulton Chain Co. Ltd. (Pulton). Pulton submitted comments on August 30, 1995. On September 18, 1995, the petitioner submitted its case brief. Excel submitted rebuttal comments on September 25, 1995. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by this review are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle," as used in this review includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyer chain.

This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently

classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7315.11.00 through 7619.90.00. HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Fair Value Comparisons

We compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We calculated USP according to the methodology described in our preliminary results, except for the adjustment of value-added taxes (VAT), as described below.

In light of the Federal Circuit's decision in *Federal Mogul v. United States*, CAFC No. 94-1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith v. United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul v. United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the "Zenith footnote 4" methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping

assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the "Zenith footnote 4" methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the "Zenith footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Foreign Market Value

With the exception noted above for VAT, we calculated FMV according to the methodology described in our preliminary results.

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). All currency conversions were made at the rates certified by the Federal Reserve Bank.

Interested Party Comments

Comment 1: Consumption Tax Adjustment

The petitioner argues that the Department erred with respect to its consumption tax (VAT) calculations for Excel's home market sales. Specifically, the petitioner claims that the Department incorrectly excluded U.S. commissions from its calculation of the hypothetical VAT amount applicable to U.S. selling expenses. Insofar as the

VAT on expenses is deducted from FMV, the petitioner argues that the alleged error has the effect of lowering FMV and thereby improperly decreasing Excel's margin.

Excel contends that it would be incorrect to include commissions in the calculation of U.S. expenses because commissions were not included in the calculation of the VAT amount that was added to U.S. price. If the Department were to include commissions in the equation for U.S. expenses, Excel argues that the Department should also include commissions in the calculation of the VAT amount that is added to U.S. price.

DOC Position

In accordance with the CAFC decision (see the "United States Price" section of this notice), the Department has changed its VAT calculation methodology. Therefore, the comments made by the petitioner and Excel are moot.

Comment 2: Pulton's Dumping Margin

Pulton states that the Department's preliminary results correctly indicated that Pulton reported no U.S. sales during this review period. However, Pulton contends that the Department incorrectly cited the dumping margin from the most recent review when Pulton had U.S. sales. Instead of the rate of 0.01 percent published by the Department, Pulton contends the rate should be 0.00 percent (see 58 FR 52264, 52267 (October 7, 1993)).

DOC Position

We agree with Pulton and have corrected this inadvertent error for these final results.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following weighted-average margins exist for the April 1, 1992 through March 31, 1993 period:

Manufacturer/exporter	Margin (percent)
Hitachi	112.68
Izumi	0.52
Pulton	10.00
Excel	0.10
All Others	15.92

¹No sales during the period. Rate is from the last period in which there were sales.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisal

instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of roller chain, other than bicycle, from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for Pulton and Excel will be zero because the margins for these firms are zero or *de minimus*. The cash deposit rates for Izumi and Hitachi will be 0.52 and 12.68 percent, respectively; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, earlier reviews, or the LTFV investigation, whichever is the most recent; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "new shipper" rate established in the first review conducted by the Department in which a "new shipper" rate was established, as discussed below.

On May 25, 1993, the CIT in *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993), and *Federal-Mogul Corporation and the Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993), decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for

correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for the purposes of this review would normally be the "new shipper" rate established in the first notice of final results of administrative review published by the Department (46 FR 44488, September 4, 1981). However, a "new shipper" rate was not established in that notice. Therefore, the "all others" rate of 15.92 percent comes from *Roller Chain, Other Than Bicycle, from Japan, Final Results of Administrative Review of Antidumping Finding*, 48 FR 51801 (November 14, 1983), the first review conducted by the Department in which a "new shipper" rate was established.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 29, 1995
 Susan G. Esserman,
Assistant Secretary for Import Administration.
 [FR Doc. 95-29728 Filed 12-5-95; 8:45 am]
 BILLING CODE 3510-DS-P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95-106. **Applicant:** Pennsylvania State University, Department of Chemistry, 152 Davey Laboratory, University Park, PA 16802. **Instrument:** Cold Stage for Time-of-Flight SIMS. **Manufacturer:** Kore Technology, Ltd., United Kingdom. **Intended Use:** The instrument will be used for studies of organic, inorganic and biological solids to determine whether a certain biological molecule is bound inside or outside the nucleus of a frozen biological cell. **Application Accepted by Commissioner of Customs:** October 24, 1995.

Docket Number: 95-107. **Applicant:** U.S. Department of Commerce, National Institute of Standards and Technology, Bldg. 222, Rm A113, Gaithersburg, MD 20899. **Instrument:** Electron Microscope, Model CM300. **Manufacturer:** Philips, The Netherlands. **Intended Use:** The instrument will be used to study the chemical and crystallographic composition, morphology, and their related spatial placement of a variety of inorganic and organic materials, such as ceramics, metals, minerals, and polymers. **Application Accepted by Commissioner of Customs:** October 26, 1995.

Docket Number: 95-108. **Applicant:** VA Medical Center of Gainesville, 1601 SW Archer Road, Gainesville, FL 32608-1197. **Instrument:** Electron Microscope, Model CM100. **Manufacturer:** Philips, The Netherlands. **Intended Use:** The instrument will be used for studies of tissue from different organs, cultured cells, and cell blocks prepared from body cavity fluids. The studies will involve investigations of cell characterizations such as cytoplasmic membrane projections, presence or absence of cell junctions, type of

junctions, and cytoplasmic organelles at the ultrastructural level to differentiate between cell types and their origin. In addition, the instrument will be used for training pathology residents.

Application Accepted by Commissioner of Customs: October 26, 1995.

Docket Number: 95-109. **Applicant:** University of California, Room 301, McCone Hall, Berkeley, CA 94720. **Instrument:** Energy Dispersive Spectrometer. **Manufacturer:** Oxford Instruments, United Kingdom. **Intended Use:** The instrument will be used for studies of various materials including mineral grain separates, whole rock thin sections, soil particles, meteorites, archeological artifacts, experimental glass and crystalline charges, volcanic ashes, rare earth semiconductors, superconducting oxides, silicide and nitride ceramics, and super alloys. In addition, the instrument will be used for educational purposes in the course Geology 401. **Application Accepted by Commissioner of Customs:** October 25, 1995.

Docket Number: 95-110. **Applicant:** National Institute of Standards and Technology, Quince Orchard Road, Gaithersburg, MD 20899. **Instrument:** Mass Spectrometer, Model JMS-700. **Manufacturer:** JEOL, Japan. **Intended Use:** The instrument will be used for the quantitative and qualitative determination of compounds of biomedical interest in complex matrices through studies of the properties of concentration, molecular weight, molecular structure, and ion structure. **Application Accepted by Commissioner of Customs:** October 26, 1995.

Docket Number: 95-111. **Applicant:** University of Wisconsin-Madison, Integrated Microscopy Resource, 1525 Linden Drive, Madison, WI 53706. **Instrument:** Mode-locked Solid State Laser. **Manufacturer:** Microlase Optical Systems, Ltd., United Kingdom. **Intended Use:** The instrument will be used as a fluorescence excitation source for the study of the dynamics of the internal cellular architecture of living biological specimens. The objective of these experimental observations is to understand how the internal machinery of a cell functions during development. In addition, the instrument will be used in courses for advanced microscopy techniques for undergraduates, graduate students and visiting academic research workers. **Application Accepted by Commissioner of Customs:** October 26, 1995.

Docket Number: 95-112. **Applicant:** The Scripps Research Institute, 10666 North Torrey Pines Road, La Jolla, CA 92037. **Instrument:** Electron Microscope, Model CM100. **Manufacturer:** Philips,

The Netherlands. **Intended Use:** The instrument will be used for electron microscopic studies of the structure of the following biological materials which have been isolated from various plants and tissue and culture cells: (1) endoplasmic reticulum and Golgi membranes, (2) plant cells, (3) actin cytoskeletal complexes, (4) nuclear envelope membranes, (5) plasma membranes, and (6) clathrin, dynamin, and GAP junctions. **Application Accepted by Commissioner of Customs:** October 16, 1995.

Frank W. Creel

Director, Statutory Import Programs Staff
[FR Doc. 95-29729 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DS-F

Indiana University Medical Center, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95-043. **Applicant:** Indiana University Medical Center, Indianapolis, IN 46202-5289. **Instrument:** Radiation Therapy Simulator, Model Simulix-MC. **Manufacturer:** Oldelft, The Netherlands. **Intended Use:** See notice at 60 FR 33190, June 27, 1995.

Comments: None Received. **Decision:** Denied. **Reasons:** In its justification for duty exemption, the applicant states: The structural, performance and operational characteristics of the foreign and domestic units are similar. However, the foreign unit possessed a greater number of the structural and operational characteristics required, without incurring a greater expense.

The applicant lists the structural and operational features of the foreign instrument which led to the purchase decision. The applicant states that each feature of the foreign instrument is also available on the domestic instrument (manufactured by Varian Corporation) and provides cost data as follows: Shadow Tray: ... With the domestic unit, an additional cost of \$6495.00 would have to be incurred by the institution. Lasers: ...With the domestic unit, an additional cost of \$15,000 would have to be incurred by the institution.

Last Image Hold: ... With the domestic unit, an additional cost of \$11,350 would have to be incurred by the institution.

The application is deficient for the reason that the applicant's purchase of the foreign article was based, not on grounds that the domestic instrument is not scientifically equivalent as required by 15 CFR 301.5(1), but on lower cost of the foreign article.

Pursuant to 15 CFR Part 301.2(s): 'Pertinent' specifications are those specifications necessary for the accomplishment of the specific scientific research and/or science-related educational purposes described by the applicant. Specifications or features (even if guaranteed) which afford greater convenience, satisfy personal preferences, accommodate institutional commitments or limitations, or assure lower costs of acquisition, installation, operation, servicing or maintenance are not pertinent. (Emphasis added.)

Also, 15 CFR 301.5(d)(1)(i) provides in part:

The determination of scientific equivalency shall be based on a comparison of the pertinent specifications of the foreign instrument with similar pertinent specifications of comparable domestic instruments... If the director finds that a domestic instrument possesses all of the pertinent specifications of the foreign instrument, he shall find that there is being manufactured in the United States an instrument of equivalent scientific value for such purposes as the foreign instrument is intended to be used.

Finally, the regulations provide in 15 CFR 301.5(e)(7) as follows: Information provided in a resubmission that... contradicts or conflicts with information provided in a prior submission..., shall not be considered in making the decision on an application that has been resubmitted. Accordingly, an applicant may elect to reinforce an original submission by elaborating in the resubmission on the description of the purposes contained in a prior submission and may supply additional examples, documentation and/or other clarifying detail, but the applicant shall not introduce new purposes or other material changes in the nature of the original application. (Emphasis added.)

Consequently, in view of the applicant's categorical statements cited above, no pertinent, scientifically relevant specifications or features independent of cost can be cited by the applicant. Accordingly, we find

pursuant to Section 301.5(d)(1)(i) that the domestic and foreign instruments are scientifically equivalent.

We conclude that affording the applicant an opportunity to resubmit its application cannot result in a statement of purpose or need consonant with the regulations. The application is denied, pursuant to Section 301.5(d)(1)(i) for the reason that "there is being manufactured in the United States an instrument of equivalent scientific value for such purposes as the foreign instrument is intended to be used.

Frank W. Creel

Director, Statutory Import Programs Staff
[FR Doc. 95-29730 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DS-F

University of California, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95-068. *Applicant:* University of California, Berkeley, CA 94720-3104. *Instrument:* Mass Spectrometer, Model JMS-AX505WA. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 60 FR 48505, September 19, 1995.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides double focusing magnetic sector design with mass range to 1200 and resolution to 20 000.

This capability is pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel

Director, Statutory Import Programs Staff
[FR Doc. 95-29731 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DS-F

C-201-505

Porcelain-on-Steel Cookingware from Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 26, 1995, the Department of Commerce (the Department) published in the Federal Register its preliminary results of administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico for Acero Porcelanizado, S.A. de C.V. (APSA). The review covers the period January 1, 1994 through December 31, 1994. We have completed this review and determine the net subsidy to be *de minimis* for APSA. The Department will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from APSA exported on or after January 1, 1994, and on or before December 31, 1994.

EFFECTIVE DATE: December 6, 1995.

FOR FURTHER INFORMATION CONTACT: Norma Curtis or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 1995, the Department published in the Federal Register (60 FR 49565) the preliminary results of its administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). We invited interested parties to comment on the preliminary results. We received no comments. The review covers the period January 1, 1994 through December 31, 1994. The review involves one company and ten programs.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's

regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by this review are shipments of porcelain-on-steel cookingware from Mexico. The products are porcelain-on-steel cookingware (except teakettles), which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under item number 7323.94.0020 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

Based upon our analysis of the questionnaire response and verification we determine the following:

I. Programs Conferring Subsidies

Bancomext Financing for Exporters

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Since we received no comments on our preliminary results, our findings remain unchanged in these final results.

II. Programs Found Not To Be Used

In the preliminary results, we found that APSA did not apply for or receive benefits under the following programs during the period of review (POR):

- A. Certificates of Fiscal Promotion (CEPROFI)
- B. PITEX
- C. Other Bancomext Preferential Financing
- D. Import Duty Reductions and Exemptions
- E. State Tax Incentives
- F. Article 15 Loans
- G. NAFINSA FOGAIN-type Financing
- H. NAFINSA FONEI-type Financing
- I. FONEI

Since we received no comments on our preliminary results, our findings remain unchanged in these final results.

Final Results of Review

For the period January 1, 1994 through December 31, 1994, we determine the net subsidy to be 0.01 percent *ad valorem* for APSA. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*.

The Department will instruct the Customs Service to liquidate, without

regard to countervailing duties, all shipments of the subject merchandise from APSA exported on or after January 1, 1994, and on or before December 31, 1994.

The Department will also instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of the subject merchandise from APSA entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. The cash deposit rates for all other producers/exporters remain unchanged from the last completed administrative review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 27, 1995.
Susan G. Esserman,
Assistant Secretary for Import
Administration.
[FR Doc. 95-29584 Filed 12-5-95; 8:45 am]
BILLING CODE 3510-DS-P

National Institute of Standards and Technology

Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of Government Owned Inventions Available for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Marcia Salkeld, National Institute of Standards and Technology, Office of Technology Partnerships,

Physics Building, Room B-256, Gaithersburg, MD 20899; Fax 301-869-2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 93-044

Title: Anti-Ferromagnetically Coupled Double-Layer Magnetic Force Microscope Probe.

Description: The magnetic force microscope probe of this invention features two magnetic layers separated by a nonmagnetic layer. The magnetic layers are preferably of different thicknesses and are strongly anti-ferromagnetically coupled. This configuration provides uniform magnetization and small stray magnetic fields.

NIST Docket No. 93-064

Title: Atomic Force Microscope Using Piezoelectric Detection.

Description: This atomic force microscope, using piezoelectric detection, determines surface properties of insulator and conductor samples without the snap-in related errors common to cantilever probe mounts.

NIST Docket No. 94-009

Title: Coupling Apparatus for Multimode Infrared Detectors.

Description: NIST researchers have invented an optical coupling device that is useful in infrared (IR) laboratory instrumentation and industrial process control. The invention combines two existing IR optical coupling devices in such a way as to overcome their individual deficiencies.

NIST Docket No. 94-039

Title: Infrared Neutral-Density Filter Having Copper Alloy Film.

Description: The infrared neutral-density optical filter of this invention has a film consisting essentially of copper and nickel, preferably using the alloy Constantan, on a dielectric substrate. The filter achieves a high optical density with a low spectral variation.

NIST Docket No. 95-011

Title: Non-Destructive Method for Determining the Extent of Cure of a Polymerizing Material and the Solidification of a Thermoplastic Polymer Based on Wavelength Shift of Fluorescence.

Description: This NIST invention uses the change in the peak fluorescence wavelength of a small amount of a fluorescent compound, a fluorophore,

which has been dissolved in a polymerizing material or a thermoplastic polymer to determine non-destructively the extent of cure or solidification, respectively. Fluorophores can also be immobilized on the surface of the optic fiber probe window in lieu of being added to the polymerizing material. The invention also identifies a new class of suitable fluorophores.

Dated: November 30, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95-29695 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

[I.D. 112795B]

International Whaling Commission; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meetings; request for comments.

SUMMARY: NOAA makes use of a public Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice sets forth guidelines for participating on the Committee and a tentative schedule of meetings and other important dates.

DATES: Comments should be submitted on or before February 15, 1996. See **SUPPLEMENTARY INFORMATION** for dates of scheduled meetings.

ADDRESSES: Recommendations to the U.S. Commissioner to the IWC and nominations to the U.S. Delegation to the IWC should be sent to: Dr. D. James Baker, Under Secretary for Oceans and Atmosphere, Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, with a copy sent to Kevin Chu, Office of International Affairs, Room 14247, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. See **SUPPLEMENTARY INFORMATION** for meeting locations.

FOR FURTHER INFORMATION CONTACT: Kevin Chu or Kim Blankenkoper, Office of International Affairs, (301) 713-2276.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the

Regulation of Whaling, 1946. This authority has been delegated to the Under Secretary for Oceans and Atmosphere, who, as the U.S. Commissioner to the IWC, has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce, and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and other interested agencies.

Each year, NOAA conducts a series of meetings and other actions to prepare for the annual meeting of the IWC, which is usually held in the spring or summer. The major purpose of the preparatory meetings is to provide for input in the development of policy by members of the public and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling. Any person with an identifiable interest in U.S. whale conservation policy may participate in the meetings, but NOAA reserves the authority to inquire about the interest of any person who appears at a meeting and to determine the appropriateness of that person's participation. Foreign nationals and persons who represent foreign governments may not attend. These stringent measures are necessary to promote the candid exchange of information. Such measures are a necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practice.

The tentative schedule of meetings, including those of the IWC, and deadlines for the preparation of position papers for the 1996 Annual Meeting of the IWC is as follows:

December 13, 1995, 1 p.m.—Room 6009, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C.—Meeting of the Interagency Committee to review past events and to begin preparation for the 1996 Annual Meeting of the IWC. As with all such meetings, interested persons who are unable to attend are welcome to submit comments. Recommendations to the U.S. Commissioner should be sent to the Under Secretary for Oceans and Atmosphere (see **ADDRESSES**).

February 15, 1995—Nominations for the U.S. Delegation to the Annual Meeting of the IWC are due to the U.S. Commissioner, with a copy to Kevin Chu (see **ADDRESSES**). All persons wishing to be considered pursuant to

the U.S. Commissioner's recommendation to the Department of State concerning the composition of the delegation should ensure that nominations are received by this date. Prospective Congressional advisors to the delegation should contact the Department of State directly.

March 21, 1996, 2 p.m.—Room 6009, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C.—Tentative Interagency Committee meeting date to review draft agenda of the IWC Annual Meeting and consider U.S. positions under those agenda items.

May 16, 1996, 2 p.m.—Room 6009, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C.—Tentative Interagency Committee meeting date for finalizing preparations for 1996 IWC meetings.

June 24–June 28, 1996—Aberdeen, United Kingdom—48th Annual Meeting of the International Whaling Commission.

Dated: November 30, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95-29607 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6714. For information on embargoes and quota re-openings, call (202) 927-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the

Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Pakistan and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. The 1996 limits for Categories 338, 340/640, 360, 361, 363, 369-F/369-P, 369-R, 369-S and 638/639 have been reduced for carryforward applied to the 1995 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.
 Committee for the Implementation of Textile Agreements
 November 29, 1995.
 Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act, and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Specific Limits	
219	6,879,526 square meters.
226/313	102,421,264 square meters.
237	334,595 dozen.
239	1,575,274 kilograms.
314	5,003,292 square meters.
315	68,538,238 square meters.
317/617	26,886,849 square meters.
331/631	2,049,146 dozen pairs.
334/634	197,630 dozen.
335/635	305,201 dozen.
336/636	401,514 dozen.
338	4,073,147 dozen.
339	1,137,351 dozen.
340/640	505,643 dozen of which not more than 200,757 dozen shall be in dress shirts in Categories 340-D/640-D ¹ .
341/641	602,272 dozen.
342/642	298,093 dozen.
347/348	665,537 dozen.
351/651	267,676 dozen.
352/652	669,190 dozen.
359-C/659-C ²	1,204,542 kilograms.
360	2,206,738 numbers.
361	2,869,590 numbers.
363	37,886,241 numbers.
369-F/369-P ³	1,896,163 kilograms.
369-R ⁴	8,848,760 kilograms.
369-S ⁵	578,911 kilograms.
613/614	20,280,350 square meters.
615	21,574,836 square meters.
625/626/627/628/629.	66,354,561 square meters of which not more than 33,177,281 square meters shall be in Category 625, not more than 33,177,281 square meters shall be in Category 626, not more than 33,177,281 square meters shall be in Category 627, not more than 6,864,265 square meters shall be in Category 628, and not more than 33,177,281 square meters shall be in Category 629.
638/639	364,003 dozen.
647/648	731,148 dozen.

¹Category 340-D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640-D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

²Category 359-C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

³Category 369-F: only HTS number 6302.91.0045; Category 369-P: only HTS numbers 6302.60.0010 and 6302.91.0005.

⁴Category 369-R: only HTS number 6307.10.2020.

⁵Category 369-S: only HTS number 6307.10.2005.

Imports charged to these category limits for the periods January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
 D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29602 Filed 11-5-95; 8:45 am]
 BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

November 29, 1995.
AGENCY: Committee for the Implementation of Textile Agreements (CITA).
ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.
FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota

status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6712. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Malaysia and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
November 29, 1995.
Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-

month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following limits:

Category	Twelve-month restraint limit
Fabric Group	106,424,002 square meters.
218, 219, 220, 225-227, 313-315, 317, 326, 611, 613/614/615/617, 619 and 620, as a group.	
Sublevels within the group	
218	6,106,086 square meters.
219	29,580,596 square meters.
220	29,580,596 square meters.
225	29,580,596 square meters.
226	29,580,596 square meters.
227	29,580,596 square meters.
313	35,279,609 square meters.
314	42,444,038 square meters.
315	29,580,596 square meters.
317	29,580,596 square meters.
326	5,720,221 square meters.
611	3,432,132 square meters.
613/614/615/617 .	33,955,231 square meters.
619	4,576,177 square meters.
620	5,720,221 square meters.
Other Specific Limits	
200	257,491 kilograms.
237	346,452 dozen.
300/301	2,730,975 kilograms.
331/631	1,875,047 dozen pairs.
333/334/335/835 .	215,029 dozen of which not more than 129,017 dozen shall be in Category 333 and not more than 129,017 dozen shall be in Category 835.
336/636	417,481 dozen.
338/339	1,035,036 dozen.
340/640	1,205,616 dozen.
341/641	1,562,523 dozen of which not more than 557,431 dozen shall be in Category 341.
342/642/842	374,258 dozen.
345	143,515 dozen.
347/348	438,650 dozen.
350/650	134,972 dozen.
351/651	232,229 dozen.
363	3,638,060 numbers.
435	15,044 dozen.
438-W ¹	12,311 dozen.
442	18,333 dozen.
445/446	29,101 dozen.
604	1,197,472 kilograms.
634/635	729,275 dozen.
638/639	429,598 dozen.
645/646	328,583 dozen.

Category	Twelve-month restraint limit
647/648	1,546,272 dozen of which not more than 1,082,389 dozen shall be in Category 647-K ² and not more than 1,082,389 dozen shall be in Category 648-K ³ .
Group II	
201, 222-224, 229, 239, 330, 332, 349, 352-354, 359-362, 369, 400-434, 436, 438-O ⁴ , 439, 440, 443, 444, 447, 448, 459, 464-469, 600-603, 606, 607, 618, 621, 622, 624-630, 632, 633, 643, 644, 649, 652-654, 659, 665-670, 831-834, 836, 838, 839, 840 and 843-859, as a group.	41,591,218 square meters equivalent.

¹ Category 438-W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2520, 6106.90.3020, 6109.90.1540, 6109.90.8020, 6110.10.2080, 6110.30.1560, 6110.90.9074 and 6114.10.0040.

² Category 647-K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20.1060 and 6113.00.9044.

³ Category 648-K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

⁴ Category 438-O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that

these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 95-29601 Filed 12-5-95; 8:45 am]
BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Uruguay

November 29, 1995.
AGENCY: Committee for the Implementation of Textile Agreements (CITA).
ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.
FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:
Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Uruguay and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 **CORRELATION** will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round

Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.
Committee for the Implementation of Textile Agreements
November 29, 1995.
Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following limits:

Category	Twelve-month restraint limit
334	131,414 dozen.
335	113,128 dozen.
410	2,823,739 square meters of which not more than 1,613,567 square meters shall be in Category 410-A ¹ and not more than 2,599,632 square meters shall be in Category 410-B ²
433	16,861 dozen.
434	25,155 dozen.
435	50,801 dozen.
442	35,937 dozen.

¹Category 410-A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

²Category 410-B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 95-29603 Filed 12-5-95; 8:45 am]
BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

November 29, 1995.
AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.
FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6717. For information on

embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Thailand and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. A directive to reduce the limits for certain categories for carryforward used during 1995 will be published in the Federal Register at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
November 29, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following limits:

Category	Twelve-month restraint limit	Category	Twelve-month restraint limit
239	5,377,008 kilograms.	442	20,202 dozen.
Levels in Group I		638/639	2,032,262 dozen.
200	1,021,931 kilograms.	640	449,649 dozen.
218	16,790,460 square meters.	645/646	272,515 dozen.
219	5,450,300 square meters.	647/648	970,153 dozen.
300	4,087,725 kilograms.	¹ Category 301-P: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.	
301-P ¹	4,087,725 kilograms.	² Category 301-O: only HTS numbers 5205.21.0000, 5205.22.0000, 5205.23.0000, 5205.24.0000, 5205.25.0000, 5205.41.0000, 5205.42.0000, 5205.43.0000, 5205.44.0000 and 5205.45.0000.	
301-O ²	817,546 kilograms.	³ Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.	
313	19,076,049 square meters.	⁴ Category 369-S: only HTS number 6307.10.2005.	
314	43,602,397 square meters.	⁵ Category 604-A: only HTS number 5509.32.0000.	
315	27,251,498 square meters.	⁶ Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.	
317/326	11,440,442 square meters.	⁷ Category 359-H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.	
363	17,713,473 numbers.		
369-D ³	194,849 kilograms.		
369-S ⁴	272,515 kilograms.		
604	637,593 kilograms of which not more than 408,772 kilograms shall be in Category 604-A ⁵ .		
607	2,725,149 kilograms.		
611	12,652,112 square meters.		
613/614/615	41,185,590 square meters of which not more than 23,981,319 square meters shall be in Categories 613/615 and not more than 23,981,319 square meters shall be in Category 614.		
617	14,872,574 square meters.		
619	6,131,587 square meters.		
620	6,131,587 square meters.		
625/626/627/628/629	12,012,464 square meters of which not more than 9,538,024 square meters shall be in Category 625.		
669-P ⁶	5,747,563 kilograms.		
Group II			
237, 330-359, 431-459, 630-659 and 831-859, as a group.	252,127,746 square meters equivalent.		
Sublevels in Group II			
331/631	1,487,406 dozen pairs.		
334/634	531,404 dozen.		
335/635/835	422,398 dozen.		
336/636	272,515 dozen.		
338/339	1,724,343 dozen.		
340	245,264 dozen.		
341/641	579,094 dozen.		
342/642	504,153 dozen.		
345	258,889 dozen.		
347/348/847	711,945 dozen.		
351/651	204,386 dozen.		
359-H/659-H ⁷	1,195,544 kilograms.		
433	9,395 dozen.		
434	11,597 dozen.		
435	52,701 dozen.		
438	17,396 dozen.		

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act and the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

The conversion factors for merged Categories 359-H/659-H and 638/639 are 11.5 and 12.96, respectively.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 95-29604 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bahrain

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Bahrain and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the availability of the 1996 **CORRELATION** will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the

implementation of certain of their provisions.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bahrain and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I 237, 239, 330-336, 338, 339, 340- 342, 345, 347, 348-354, 359, 431-436, 438- 440, 442-448, 459, 630-636, 638, 639, 640- 647, 648, 649, 650-654, 659, 831-836, 838, 839, 840, 842- 847, 850-852, 858, 859.	36,748,875 square meters equivalent.
Sublevels in Group I 338/339	510,633 dozen.
340/640	244,993 dozen of which not more than 183,744 dozen shall be in Categories 340-Y/640-Y 1.

¹Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative

arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29593 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Guatemala and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC). The Guaranteed Access Levels are being established pursuant to a Memorandum of Understanding dated March 3, 1995 between the Governments of the United States and Guatemala.

In the letter published below, the Chairman of CITA directs the

Commissioner of Customs to establish limits and guaranteed access levels for 1996.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

Requirements for participation in the Special Access Program are available in Federal Register notice 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 55 FR 3079, published on January 30, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Guatemala and exported during the period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	1,161,407 dozen.
342/642	408,100 dozen.
347/348	1,390,651 dozen.
351/651	244,993 dozen.
443	69,198 numbers.
448	43,356 dozen.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled

balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

Pursuant to the Memorandum of Understanding dated March 3, 1995 between the Governments of the United States and Guatemala; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on January 1, 1996, guaranteed access levels are being established for properly certified textile products assembled in Guatemala from fabric formed and cut in the United States in the following categories which are re-exported to the United States from Guatemala during the period January 1, 1996 through December 31, 1996:

Category	Guaranteed Access Level
340/640	520,000 dozen.
342/642	100,000 dozen.
347/348	1,000,000 dozen.
351/651	200,000 dozen.
443	25,000 numbers.
448	42,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of January 24, 1990, as amended, shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29592 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6705. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in India and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. The limit for Categories 340/640 has been reduced for carryforward applied in 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay

Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
218	12,013,542 square meters.
219	56,990,137 square meters.
313	32,143,792 square meters.
314	6,784,540 square meters.
315	11,395,309 square meters.
317	36,133,448 square meters.
326	8,212,147 square meters.
334/634	121,269 dozen.
335/635	539,888 dozen.
336/636	747,677 dozen.
338/339	3,558,597 dozen.
340/640	1,658,861 dozen.
341	3,819,560 dozen of which not more than 2,291,735 dozen shall be in Category 341-Y ¹ .
342/642	1,093,273 dozen.
345	160,606 dozen.
347/348	516,720 dozen.
351/651	231,097 dozen.
363	37,542,958 numbers.
369-D ²	1,131,194 kilograms.
369-S ³	617,015 kilograms.
641	1,272,851 dozen.
647/648	739,132 dozen.
Group II	
200, 201, 220-229, 237, 239, 300, 301, 330-333, 349, 350, 352, 359-362, 600-607, 611-629, 630-633, 638, 639, 643-646, 649, 650, 652, 659, 665-O ⁴ , 666, 669, 670, and 831-859, as a group.	98,195,449 square meters equivalent.

¹ Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.
² Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.
³ Category 369-S: only HTS number 6307.10.2005.

⁴ Category 665-O: all HTS numbers except 5702.10.9030, 5702.42.2020, 5702.92.0010 and 5703.20.1000 (rugs).

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
 D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.
 [FR Doc. 95-29591 Filed 12-5-95; 8:45 am]
BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kuwait

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Kuwait and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to

the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. The limit for Category 361 is zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the availability of the 1996 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
 November 29, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kuwait and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	231,125 dozen.
341/641	127,119 dozen.
361	—0—.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29590 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 6, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 340 is being increased for swing and carryover. The limit for Category 640 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 66007, published on December 22, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 14, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in the Nepal and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on December 6, 1995, you are directed to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Nepal:

Category	Adjusted limit ¹
340	332,310 dozen.
640	125,906 dozen.

¹The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29585 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Egypt

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Egypt and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 **CORRELATION** will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Egypt and

exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Fabric Group 218-220, 224-227, 313-317 and 326, as a group.	91,072,936 square meters.
Sublevels in Fabric Group	
218	2,508,000 square meters.
219	21,427,429 square meters.
220	21,427,429 square meters.
224	21,427,429 square meters.
225	21,427,429 square meters.
226	21,427,429 square meters.
227	21,427,429 square meters.
313	39,346,901 square meters.
314	21,427,429 square meters.
315	25,162,423 square meters.
317	21,427,429 square meters.
326	2,508,000 square meters.
Levels not in a group	
300/301	8,420,461 kilograms of which not more than 2,640,953 kilograms shall be in Category 301.
338/339	2,426,813 dozen.
340/640	1,005,394 dozen.
369-S ¹	1,273,141 kilograms.
448	18,617 dozen.

¹ Category 369-S: only HTS number 6307.10.2005.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 95-29586 Filed 12-5-95; 8:45 am]
BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Mauritius and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. A directive to reduce the limits for certain categories for carryforward used during 1995 will be published in the Federal Register at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see Federal Register notice 59 FR 65531, published on December 20, 1994).

Information regarding the 1996 **CORRELATION** will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.
Committee for the Implementation of Textile Agreements
November 29, 1995.
Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Knit group 345, 438, 445, 446, 645 and 646, as a group.	154,374 dozen.
Levels not in a group	
237	199,074 dozen.
335/835	79,133 dozen.
336	93,121 dozen.
338/339	372,799 dozen.
340/640	606,703 dozen of which not more than 369,315 dozen shall be in Categories 340-Y/640-Y ¹ .
341/641	420,277 dozen.
347/348	784,725 dozen.
351/651	184,557 dozen.
352/652	1,565,044 dozen of which not more than 1,330,289 dozen shall be in Category 352.
442	11,654 dozen.
604-A ²	360,361 kilograms.
638/639	428,720 dozen.

Category	Twelve-month restraint limit
647/648/847	578,102 dozen.

¹Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

²Category 604-A: only HTS number 5509.32.0000.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29588 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

November 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6716. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Singapore and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. The 1996 limit for Categories 338/339 has been adjusted for carryforward applied in 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
222	433,299 kilograms.

Category	Twelve-month restraint limit
237	253,114 dozen.
239	493,300 kilograms.
331	449,555 dozen pairs.
334	69,380 dozen.
335	208,697 dozen.
338/339	1,174,717 dozen of which not more than 713,983 dozen shall be in Category 338 and not more than 793,860 dozen shall be in Category 339.
340	855,022 dozen.
341	214,996 dozen.
342	132,304 dozen.
347/348	976,659 dozen of which not more than 610,412 dozen shall be in Category 347 and not more than 474,765 dozen shall be in Category 348.
435	6,735 dozen.
604	873,704 kilograms.
631	496,144 dozen pairs.
634	264,882 dozen.
635	271,064 dozen.
638	972,868 dozen.
639	3,375,801 dozen.
640	182,283 dozen.
641	297,322 dozen.
642	284,922 dozen.
645/646	149,212 dozen.
647	568,040 dozen.
648	1,512,252 dozen.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing, and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29589 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 5, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6713. For information on embargoes and quota re-openings, call (202) 482-3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17334, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive

concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on December 5, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit ¹
Levels in Group I	
237	978,399 dozen.
333/334	244,572 dozen.
335	120,161 dozen.
359-C/659-C ²	1,074,618 kilograms.

¹The limits have not been adjusted to account for any imports exported after December 31, 1994.

²Category 359-C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 95-29594 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Poland

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on

embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Poland and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. The limits for Categories 435 and 443 have been reduced for carryforward applied to the 1995 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 **CORRELATION** will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
335	168,800 dozen.
338/339	1,817,844 dozen.
410	2,614,405 square meters.
433	18,463 dozen.
434	10,070 dozen.
435	12,396 dozen.
443	206,596 numbers.
611	5,195,788 square meters.
645/646	266,184 dozen.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment pursuant to the provisions of the Uruguay Round Agreements Act, the ATC, and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29596 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Burma

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Burma and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the availability of the 1996 **CORRELATION** will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Burma and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	93,975 dozen.
342/642	25,383 dozen.
347/348	131,659 dozen.
351/651	39,893 dozen.
448	2,316 dozen.
647/648/847	24,551 dozen.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29595 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the

Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Brazil and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements
Committee for the Implementation of Textile Agreements

November 29, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996, in excess of the following limits:

Category	Twelve-month restraint limit
Aggregate Limit 200-239, 300-369, 400-469 and 600-670, as a group.	434,664,537 square meters equivalent.

Category	Twelve-month restraint limit
Sublevels in the aggregate	
218	5,350,826 square meters.
219	19,535,266 square meters.
225	9,363,945 square meters.
300/301	7,256,950 kilograms.
313	44,937,433 square meters.
314	7,357,387 square meters.
315	22,072,160 square meters.
317/326	20,065,598 square meters.
334/335	143,987 dozen.
336	79,994 dozen.
338/339/638/639 ...	1,439,896 dozen.
342/642	423,969 dozen.
347/348	1,039,925 dozen.
350	161,335 dozen.
361	1,087,921 numbers.
363	23,218,856 numbers.
369-D ¹	518,588 kilograms.
410/624	10,701,653 square meters of which not more than 2,627,483 square meters shall be in Category 410.
433	18,239 dozen.
445/446	71,451 dozen.
604	507,986 kilograms of which not more than 388,248 kilograms shall be in Category 604-A ² .
607	4,717,019 kilograms.
647/648	479,966 dozen.
669-P ³	1,728,629 kilograms.

¹Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0045, and 6302.91.0005

²Category 604-A: only HTS number 5509.32.0000.

³Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the 1996 levels set forth in this directive.

The conversion factor for Categories 338/339/638/639 is 10 square meters per dozen.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 95-29597 Filed 12-5-95; 8:45 am]
BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Honduras

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Honduras and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant

to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Honduras and exported during the period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following restraint limits:

Category	Twelve-month limit
352/652	10,070,000 dozen of which not more than 7,420,000 dozen shall be in Categories 352-K/652-K ¹ .
435	14,688 dozen.

¹Category 352-K: only HTS numbers 6107.11.0010, 6107.11.0020, 6108.19.9010, 6108.21.0010, 6108.21.0020, 6108.91.0005, 6108.91.0015, 6109.91.0025, 6109.10.0005, 6109.10.0007, 6109.10.0009, 6109.10.0037; Category 652-K: only HTS numbers 6107.12.0010, 6107.12.0020, 6108.11.0010, 6108.11.0020, 6108.22.9020, 6108.22.9030, 6108.92.0005, 6108.92.0015, 6108.92.0025, 6109.90.1047 and 6109.90.1075.

Imports charged to these category limits for the periods March 27, 1995 through December 31, 1995 (Categories 352/652) and April 24, 1995 through December 31, 1995 (Category 435) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29598 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Hungary and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994).

Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant

to it are not designed to implement all of the provisions of the Uruguay Round Agreements and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following restraint limits:

Category	Twelve-month restraint limit
351/651	225,347 dozen.
410	909,895 square meters.
433	17,255 dozen.
434	14,641 dozen.
435	25,307 dozen.
443	162,093 numbers.
444	52,289 numbers.
448	22,365 dozen.
604	1,115,345 kilograms.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29599 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6707. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Korea and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. A directive to reduce the limits for certain categories for carryforward used during 1995 will be published in the Federal Register at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 **CORRELATION** will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the

implementation of certain of their provisions.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
November 29, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I	
200-223, 224-V ¹ , 224-O ² , 225-229, 300-326, 360-363, 369-O ³ , 400-414, 464-469, 600-629, 665-669 and 670-O ⁴ , as a group.	406,509,575 square meters equivalent.
Sublevels within Group I	
200	432,441 kilograms.
201	1,877,628 kilograms.
218	8,765,718 square meters.
219	7,981,791 square meters.
224-V	10,062,270 square meters.
300/301	2,940,444 kilograms.
313	47,919,257 square meters.
314	26,717,675 square meters.
315	17,577,926 square meters.
317/326	17,808,042 square meters.
363	1,026,231 numbers.
410	3,460,880 square meters.
604	360,019 kilograms.
607	1,051,887 kilograms.
611	3,506,288 square meters.
613/614	5,843,811 square meters.
617	4,846,088 square meters.

Category	Twelve-month restraint limit
619/620	92,112,643 square meters.
624	8,551,920 square meters.
625/626/627/628/629	14,960,158 square meters.
669-P ⁵	2,151,808 kilograms.
Group II	
237, 239, 330-359, 431-459 and 630-659, as a group.	578,869,292 square meters equivalent.
Sublevels within Group II	
237	58,152 dozen.
239	971,233 kilograms.
333/334/335	262,972 dozen of which not more than 134,408 dozen shall be in Category 335.
336	55,573 dozen.
338/339	1,168,763 dozen.
340	607,757 dozen of which not more than 315,567 dozen shall be in Category 340-D ⁶ .
341	175,780 dozen.
342/642	211,365 dozen.
345	113,543 dozen.
347/348	432,441 dozen.
350	16,163 dozen.
351/651	222,044 dozen.
352	172,789 dozen.
353/354/653/654	259,909 dozen.
359-H ⁷	2,489,197 kilograms.
433	13,755 dozen.
434	7,055 dozen.
435	34,328 dozen.
436	14,532 dozen.
438	58,262 dozen.
440	196,084 dozen.
442	49,109 dozen.
443	322,056 numbers.
444	53,514 numbers.
445/446	51,602 dozen.
447	88,037 dozen.
448	34,548 dozen.
459-W ⁸	93,455 kilograms.
631	291,752 dozen pairs.
632	1,545,530 dozen pairs.
633/634/635	1,348,047 dozen of which not more than 152,866 dozen shall be in Category 633 and not more than 569,683 dozen shall be in Category 635.
636	261,182 dozen.
638/639	5,248,417 dozen.
640-D ⁹	3,096,056 dozen.
640-O ¹⁰	2,580,046 dozen.
641	1,037,334 dozen of which not more than 39,183 dozen shall be in Category 641-Y ¹¹ .
643	768,507 numbers.
644	1,156,186 numbers.
645/646	3,546,496 dozen.
647/648	1,294,013 dozen.
650	23,653 dozen.
659-H ¹²	1,289,450 kilograms.

Category	Twelve-month restraint limit
659-S ¹³ Group III 831-844 and 847-859, as a group. Sublevel within Group III 835	173,944 kilograms. 18,181,285 square me- ters equivalent. 28,426 dozen.
Group IV 845	2,315,056 dozen.
846	816,654 dozen.
Group VI 369-L/670-L/ 870 ¹⁴ .	68,571,604 square me- ters equivalent.

¹ Category 224-V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

² Category 224-O: all remaining HTS numbers in Category 224.

³ Category 369-O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090 (Category 369-L); and 5601.21.0090.

⁴ Category 670-O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670-L).

⁵ Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

⁶ Category 340-D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

⁷ Category 359-H: only HTS numbers 6505.90.1540 and 6505.90.2060.

⁸ Category 459-W: only HTS number 6505.90.4090.

⁹ Category 640-D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

¹⁰ Category 640-O: all HTS numbers except 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030 (Category 640-D).

¹¹ Category 641-Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

¹² Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

¹³ Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

¹⁴ Category 870; Category 369-L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090; Category 670-L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the

provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

The conversion factors for the following merged categories are listed below:

Category	Conversion factor (Square meters equivalent/category unit)
333/334/335	33.75
369-L/670-L/870	3.8
633/634/635	34.1
638/639	12.96

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29600 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in the Slovak Republic and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the

Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. The limit for Category 443 has been reduced for carryforward used in 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Slovak Republic and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996 in excess of the following limits:

Category	Twelve-month restraint limit
410	403,915 square me- ters.
433	11,282 dozen.
435	17,040 dozen.
443	87,731 numbers.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29605 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

November 29, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, establishes limits for the period beginning on January 1, 1996 through December 31, 1996.

These limits are subject to revision pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC). On the date that Nepal becomes a member of the World Trade Organization the restraint limits will be modified in accordance with the ATC.

In the letter published below, the Chairman of CITA directs the

Commissioner of Customs to establish the 1996 limits. The 1996 limit for Categories 336/636 has been reduced for carryforward applied to the 1995 limit.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, between the Governments of the United States and Nepal; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
336/636	178,773 dozen.
340	301,067 dozen.
341	967,060 dozen.
342	146,795 dozen.
347/348	678,138 dozen.
640	151,525 dozen.
641	341,652 dozen.

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Should Nepal become a member of the World Trade Organization (WTO), the limits

set forth above will be subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29587 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

November 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482094212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927096704. For information on embargoes and quota re-openings, call (202) 482093715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in Indonesia and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish

the 1996 limits. The 1996 limits for Categories 336/636, 338/339, 341, 350/650, 369-S, 433, 447 and 638/639 have been reduced for carryforward applied in 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
November 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
200	722,583 kilograms.
219	8,026,746 square meters.
225	5,620,804 square meters.
300/301	3,434,936 kilograms.
313	14,564,446 square meters.
314	50,855,399 square meters.
315	23,107,747 square meters.

Category	Twelve-month restraint limit	Category	Twelve-month restraint limit
317/617/326	22,318,752 square meters of which not more than 3,297,838 square meters shall be in Category 326.	Group II	79,652,572 square meters equivalent.
331/631	2,049,548 dozen pairs.	201, 218, 220, 222-224, 226, 227, 229, 237, 239, 330, 332, 333, 349, 352-354, 359-O1A ⁵ , 362, 363, 369-O1A ⁶ , 400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 459, 464, 465, 469, 603, 604-O1A ⁷ , 606, 607, 621, 622, 624, 630, 632, 633, 649, 652-654, 659-O1A ⁸ , 665, 666, 669-O1A ⁹ , 670-O1A ¹⁰ , 831-836, 838, 839, 840, 842-846, 850-852, 858 and 859, as a group.	
334/335	187,814 dozen.	Subgroup in Group II	
336/636	495,182 dozen.	400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 459, 464, 465, and 469, as a group.	
338/339	957,348 dozen.	In Group II subgroup	
340/640	1,249,067 dozen.	435	
341	709,112 dozen.	46,050 dozen.	
342/642	312,267 dozen.		
345	363,224 dozen.		
347/348	1,373,974 dozen.		
350/650	136,176 dozen.		
351/651	405,947 dozen.		
359-C/659-C1A ¹ ...	1,186,614 kilograms.		
359-S/659-S1A ² ...	1,249,067 kilograms.		
360	1,111,665 numbers.		
361	1,111,665 numbers.		
369-S1A ³	723,722 kilograms.		
433	10,537 dozen.		
443	83,099 numbers.		
445/446	55,684 dozen.		
447	15,635 dozen.		
448	20,467 dozen.		
604-A1A ⁴	596,343 kilograms.		
611	5,296,417 square meters.		
613/614/615	21,171,692 square meters.		
618	4,996,270 square meters.		
619/620	7,744,218 square meters.		
625/626/627/628/629.	23,696,939 square meters.		
634/635	249,814 dozen.		
638/639	1,226,161 dozen.		
641	1,904,456 dozen.		
643	277,917 numbers.		
644	389,083 numbers.		
645/646	657,348 dozen.		
647/648	2,723,299 dozen.		
847	344,082 dozen.		

¹ Category 359-C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

² Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

³ Category 369-S: only HTS number 6307.10.2005.

⁴ Category 604-A: only HTS number 5509.32.0000.

⁵Category 359-O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359-C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359-S).

⁶Category 369-O: all HTS numbers except 6307.10.2005 (Category 369-S).

⁷Category 604-O: all HTS numbers except 5509.32.0000 (Category 604-A).

⁸Category 659-O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659-C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659-S).

⁹Category 669-O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669-P).

¹⁰Category 670-O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670-L).

Imports charged to these category limits for the period January 1, 1995 through December 31, 1995 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29725 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

November 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6713. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The import restraint limits for textile products, produced or manufactured in the Philippines and exported during the period January 1, 1996 through December 31, 1996 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1996 limits. The 1996 limits for Categories 331/631, 333/334, 335, 336, 338/339, 340/640, 347/348, 351/651, 433, 443, 447, 634, 635, 647/648, 650 and 659-H have been reduced for carryforward used in 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the

implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1995.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996, in excess of the following limits:

Category	Twelve-month restraint limit
Levels in Group I	
237	1,529,879 dozen.
239	9,230,839 kilograms.
331/631	4,676,321 dozen pairs.
333/334	226,214 dozen of which not more than 34,405 dozen shall be in Category 333.
335	147,242 dozen.
336	535,828 dozen.
338/339	1,877,921 dozen.
340/640	833,907 dozen.
341/641	798,267 dozen.
342/642	491,008 dozen.
345	146,221 dozen.
347/348	1,623,724 dozen.
350	129,445 dozen.
351/651	505,499 dozen.
352/652	2,103,211 dozen.
359-C/659-C ¹	727,613 kilograms.
361	1,635,090 numbers.
369-S ²	370,634 kilograms.
431	166,219 dozen pairs.
433	3,079 dozen.
443	37,229 numbers.
445/446	27,031 dozen.
447	7,070 dozen.
611	4,907,035 square meters.
633	31,638 dozen.
634	370,522 dozen.
635	310,483 dozen.
636	1,479,388 dozen.
638/639	2,046,481 dozen.
643	755,697 numbers.
645/646	665,076 dozen.
647/648	979,739 dozen.
649	6,711,896 dozen.
650	87,451 dozen.
659-H ³	1,150,616 kilograms.
847	808,538 dozen.

31, 1995 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

Should China become a member of the World Trade Organization (WTO) and the United States applies the Uruguay Round Agreements to China, the limit set forth above may be subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing, and any administrative arrangement notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95-29724 Filed 12-5-95; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Board of Visitors, Joint Military Intelligence College; Notice

SUMMARY: The Board of Visitors, Joint Military Intelligence College (BovJMIC) has been renewed, effective November 27, 1995, in consonance with the public interest, and in accordance with the provisions of Pub. L. 92-463, the "Federal Advisory Committee Act."

The BovJMIC will continue to provide the Director, defense Intelligence Agency, and the President, Joint Military Intelligence College with independent, expert advice concerning matters relating to mission, policy, accreditation, faculty, students, facilities, curricula, educational methods, research, and administration. The Board will be composed of about ten members who are acclaimed experts in the national intelligence community, and who are former high ranking military officers and civilian government officials, and distinguished representatives from academia and the Foreign Service. Efforts will be made to continue the balanced membership.

For further information regarding the BovJMIC, please contact Dr. Bill Williamson, (202) 231-3311.

Dated: November 30, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-29704 Filed 12-5-95; 8:45 am]

BILLING CODE 5000-04-M

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 the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 5, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708-8196. 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 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public 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 of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB.

Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the request are available from Patrick J. Sherrill at the address specified above.

Dated: November 30, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Extension.

Title: Addendum to Federal Direct PLUS Loan Promissory Note Endorser.

Frequency: One Time.

Affected Public: Individuals or households.

Reporting Burden:

Responses: 34,000.

Burden Hours: 17,000.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: Applications for Federal Direct PLUS Loans who have adverse credit may obtain endorsers. The information collected on this form is used to check credit of endorsers. The respondents are endorsers.

Office of Postsecondary Education

Type of Review: Extension.

Title: Federal Direct PLUS Loan Application and Promissory Note.

Frequency: One Time.

Affected Public: Individuals or households.

Reporting Burden:

Responses: 135,000.

Burden Hours: 67,500.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This information is used to determine applicant eligibility for Federal Direct PLUS Loans. The respondents are parents applying for benefits.

Office of Postsecondary Education

Type of Review: Extension.

Title: Federal Direct Stafford/Form Loan and Federal Direct Unsubsidized Stafford/Ford Loan Promissory Note and Disclosure.

Frequency: One Time.

Affected Public: Individuals or households.

Reporting Burden:

Responses: 2,757,000

Burden Hours: 459,316.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This information is used to determine eligibility for Federal Direct Stafford/Ford Loans and/or Federal Direct Unsubsidized Stafford/Ford Loans. The respondents are students applying for benefits.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Migrant Education Interstate and Intrastate Coordination Program.

Frequency: Annually.

Affected Public: Not for Profit institutions; State, Local or Tribal Governments.

Reporting Burden:

Responses: 45.

Burden Hours: 2704.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: SEAs, LEAs, institutions of higher education, and other public and private nonprofit organizations are eligible to submit an application to the Secretary for Federal Assistance to design and operate special projects to improve interstate and intrastate migrant education program coordination activities.

[FR Doc. 95-29580 Filed 12-5-95; 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 the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 5, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202-4651, or should be electronic mailed to the Internet address #FIRB@ed.gov, or should be faxed to 202-708-9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708-8196. 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 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 of the Information Resources Group publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of the collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comments at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 30, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Consolidated State Plan, Section 14302 of the ESEA.

Frequency: One Time.

Affected Public: State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 54

Burden Hours: 12,744

Abstract: In order to improve teaching and learning through better coordination and integration of program activities, SEAs may submit final consolidated State plans under Section 14302 of the ESEA. Submitting a consolidated plan will allow a State to obtain funds under many Federal programs through a single plan, rather than through separate program plans or applications.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Early Intervention Program for Infants & Toddlers with Disabilities under the Individuals with Disabilities Education Act (IDEA).

Frequency: Annually.

Affected Public: State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 57

Burden Hours: 1,140

Abstract: Grant application package including certifications and forms. Each eligible State submits an application that contains descriptions of required components of statewide system of early intervention services to ensure compliance with the statute. Completion of items in the application package assures a level of uniformity of system's information provided across the States for services for infants and toddlers with disabilities and their families.

Office of Postsecondary Education

Type of Review: New.

Title: Direct Loan Participant Survey.

Frequency: Annually.

Affected Public: Business or other for-profit; Not for profit institutions.

Reporting and Recordkeeping Burden:

Responses: 1,500

Burden Hours: 750

Abstract: This information is being requested specifically for providing a higher level of customer service to Direct Loan schools. Collection of this information will allow us to provide better technical assistance to DL schools and to provide a network database to schools as an information device that would enable them to communicate with schools that have similar computer configurations, software needs and processing procedures.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: State Student Incentive Grant (SSIG) Program.

Frequency: Annually.

Affected Public: State, local, Tribal or Government, SEAs or LEAs.

Reporting and Recordkeeping Burden: Responses: 57.
Burden Hours: 228.

Abstract: The SSIG Program uses matching Federal/State funds to provide a nationwide system of grants to assist postsecondary education students with substantial financial need. On this application the states provide information the Department requires to obligate program funds and for program management. The signed assurances legally bind the states to administer the program according to regulatory and statutory requirements.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Performance Report for the Robert C. Byrd Honors Scholarship Program.

Frequency: Annually.

Affected Public: Individuals or households; State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Burden: Responses: 59.
Burden Hours: 2.

Abstract: This performance report is used by State educational agencies that have participated in the Robert C. Byrd Honors Scholarship Program. The U.S. Department of Education uses the information collected to assess the accomplishments of project goals and objectives and to aid in effective program management.

Office of Educational Research and Improvement

Type of Review: New.

Title: Baccalaureate and Beyond Longitudinal Study: Second Follow-up.

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Burden: Responses: 11,500.
Burden Hours: 7,935.

Abstract: This study will collect and report data about students who completed a bachelor's degree in 1992-03. Specifically, this follow-up will collect data concerning post-baccalaureate degree attendance, persistence, and competition; transition into and experience after entry into the work force; and career paths of those who entered teaching at the elementary/secondary level.

Office of Management

Type of Review: Revision.

Title: Waivers Under Goals 2000: Educate America Act, ESEA & School-to-Work.

Frequency: One Time.

Affected Public: State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Burden: Responses: 150
Burden Hours: 3,000

Abstract: This information collection is necessary to provide guidance to schools, LEAs and SEAs on submission of requests for waivers of statutory and regulatory requirements. The Department will use the information to grant waivers.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: The Even Start Family Program for Federally Recognized Indian Tribes and Tribal organizations.

Frequency: Annually.

Affected Public: State, Local, Tribal Governments.

Annual Reporting and Recordkeeping Burden:

Responses: 50

Burden Hours: 750

Abstract: The Even Start Family Literacy Program for federally recognized Indian tribes and tribal organizations is designed to help break the cycle of poverty and improve literacy by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified literacy program.

Office of Educational Research and Improvement

Type of Review: New.

Title: A Study of Charter Schools.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local or Tribal Governments.

Reporting Burden:

Responses: 1,000

Burden Hours: 535

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This is a four-year study of charter schools to determine the impact of charter schools on student achievement, on education reform, and on a multi-faceted array of other issues. It includes an annual survey of the universe and site visits at increasingly deep levels.

[FR Doc. 95-29581 Filed 12-5-95; 8:45 am]

BILLING CODE 4000-01-M

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 5, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT:

Patrick J. Sherrill (202) 708-8196.

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 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public and 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 of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

Dated: December 1, 1995.
Gloria Parker,
Director, Information Resources Group.
Office of Educational Research and
Improvement

Type of Review: Reinstatement.
Title: Application for the National
Assessment of Educational Progress
Data Reporting Program.
Frequency: Annually.
Affected Public: Business or other-
profit; Not for Profit institutions; State,
Local or Tribal Government.
Reporting Burden:
Responses: 15
Burden Hours: 360
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by
State Educational agencies to apply for
funding under the National Assessment
of Educational Progress Data Reporting
Program. The Department will use the
information to make grant awards.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Annual Performance Report for
the Student Services Program.
Frequency: One Time.
Affected Public: Not for Profit
Institutions.
Reporting Burden:
Responses: 1
Burden Hours: 3,181
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: Data assures that grantees
have conducted the project for which
funded, signals problems of
implementation, and indicates extent
and quality of performance. The
Department uses reports in evaluating
projects for continuation, assessing
technical assistance needs, determining
future funding levels and in assigning
scores to projects in competition for
new grants.

Office of Postsecondary Education

Type of Review: Revision.
Title: Performance Report for the
Graduate Assistance in Areas of the
National Need Program.
Frequency: Annually.
Affected Public: Not for Profit
Institutions.
Reporting Burden:
Responses: 1
Burden Hours: 2,414
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Academic departments of
institutions of higher education that

have received GAANN grants are
required to demonstrate compliance
with statutory and regulatory
requirements for the distribution of
fellowships and assisting project
progress. Report will also be used to
determine whether respondents have
met the criteria for receiving
continuation awards and to make post-
first year awards to continuing projects.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Performance Report for the
School, College, and University
Partnerships (SCUP) Program.
Frequency: Annually.
Affected Public: Not for Profit
institutions; State, Local or Tribal
Government.
Reporting Burden:
Responses: 1
Burden Hours: 240
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: SCUP grantees must submit
the report annually so the Department
can evaluate the performance of
grantees prior to awarding continuation
grants. The Department will also
aggregate data on project outcomes
related to student and school
performance impact, and identify
exemplary projects.

[FR Doc. 95-29699 Filed 12-5-95; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

**Federal Energy Regulatory
Commission**

[Docket No. RP96-49-000]

**El Paso Natural Gas Company; Notice
of Proposed Changes in FERC Gas
Tariff**

November 30, 1995.

Take notice that on November 24,
1995, El Paso Natural Gas Company (El
Paso), tendered for filing as part of its
FERC Gas Tariff, Volume Nos. 1, 1-A,
and 2, the following tariff sheets, to
become effective November 13, 1995.

Third Revised Volume No. 1

Title Page
First Revised Sheet No. 100
First Revised Sheet No. 200
First Revised Sheet No. 201
First Revised Sheet No. 312
First Revised Sheet No. 340
First Revised Sheet No. 343
First Revised Sheet No. 350
First Revised Sheet No. 500-504

Second Revised Volume No. 1-A

Title Page

First Revised Sheet No. 1
2nd Revised Fourth Revised Sheet No. 20
Second Revised Sheet No. 21
1st Revised First Revised Sheet No. 22
2nd Revised Fourth Revised Sheet No. 23
Second Revised Sheet No. 24
2nd Revised Fourth Revised Sheet No. 25
Second Revised Sheet No. 26
1st Revised Third Revised Sheet Nos. 27-29
Original Sheet Nos. 30-32
Sheet Nos. 33-99
First Revised Sheet Nos. 100-103
1st Revised First Revised Sheet No. 104
First Revised Sheet No. 105
First Revised Sheet Nos. 110-113
1st Revised Original Sheet Nos. 114-115
1st Revised First Revised Sheet No. 116
1st Revised Original Sheet Nos. 117-119
First Revised Sheet No. 120
First Revised Sheet Nos. 125-128
1st Revised First Revised Sheet No. 129
First Revised Sheet No. 130
First Revised Sheet Nos. 212-214
First Revised Sheet No. 215A
First Revised Sheet No. 241
First Revised Sheet No. 249
Second Revised Sheet No. 258
First Revised Sheet No. 274
First Revised Sheet Nos. 287-288
First Revised Sheet No. 291
First Revised Sheet Nos. 334-335
First Revised Sheet No. 344
First Revised Sheet No. 348
First Revised Sheet No. 361
1st Revised Original Sheet No. 362
First Revised Sheet Nos. 400-409
First Revised Sheet Nos. 414-426
First Revised Sheet Nos. 432-444
First Revised Sheet Nos. 500-502

Third Revised Volume No. 2

Title Page
2nd Revised Thirty-Fifth Revised Sheet No.
1-D.2
Twenty-Sixth Revised Sheet No. 1-D.3

El Paso states that it is proposing to:

(1) eliminate the Minimum Monthly Bill
section in the respective transportation rate
schedules;

(2) provide El Paso's telephone and
facsimile numbers as well as street address
on the respective title pages of each volume
of the Tariff;

(3) revise the designation of its
transportation rate schedules;

(4) revise tariff sheets containing the
Statement of Rates for transportation of
natural gas to provide for a total rate;

(5) provide a statement setting forth El
Paso's policy on financing or construction of
pipeline laterals;

(6) provide a statement describing the
manner and order in which El Paso discounts
its rates; and

(7) revise its Index of Customers to include
each contract's expiration date and contract
demand.

El Paso states that the purpose of this
filing is to comply with the
requirements of Order No. 582 issued
September 28, 1995, at Docket No.
RM95-3-000 which pertain to the form
and composition of an interstate
pipeline company's tariff.

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, 888 First Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. Under § 154.209 all such motions or protests must be filed on or before December 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 95-29629 Filed 12-5-95; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. PR96-3-000]

Equitable Storage Company; Notice of Petition for Rate Approval

November 30, 1995.

Take notice that on November 14, 1995, Equitable Storage Company (Equitable) located at 200 WestLake Park Blvd., Houston, Texas 77079, filed pursuant to § 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable, its rate for interruptible transportation services being rendered pursuant to Section 311(a)(2) of the NGPA.

Equitable's petition states that it is an intrastate natural gas pipeline company within the meaning of Section 2(16) of the NGPA,¹ and the developer and sole owner of an intrastate natural gas pipeline system which is the subject of this petition for rate approval. The pipeline will be approximately 14.6 miles in length, will be located in the State of Louisiana, more specifically in Iberia and Vermilion Parishes, Louisiana, and will connect Equitable's Jefferson Island Underground Gas Storage and Interchange Facility TM with several intrastate and interstate natural gas pipelines.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed with

the Secretary of the Commission on or before December 15, 1995. This petition for rate approval is on file with the Commission and is available for public inspection at the Commission's Public Reference Office.

Lois D. Cashell,
Secretary.

[FR Doc. 95-29630 Filed 12-5-95; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM96-2-86-000]

Pacific Gas Transmission Company; Notice of Compliance Filing

November 30, 1995.

Take notice that on November 22, 1995, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A: Tenth Revised Sheet No. 4 and Second Revised Sheet No. 4A; and as part of its FERC Gas Tariff, Second Revised Volume No. 1: Eighth Revised Sheet No. 7. PGT requests the above-referenced sheets become effective January 1, 1996.

PGT asserts that the purpose of this filing is to comply with the Commission's order issued October 13, 1995 in Docket RP95-374-000.

PGT states that the above tariff sheets have been revised to reflect a change to the Gas Research Institute funding unit adjustment component for certain transportation services, in accordance with the October 13, 1995 order.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 4, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 95-29627 Filed 12-5-95; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM96-2-99-000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 30, 1995.

Take notice that on November 27, 1995, Kern River Gas Transmission Company (Kern River), tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1, the following tariff sheets, to become effective January 1, 1996:

Fourth Revised Sheet No. 5
Fourth Revised Sheet No. 6

Kern River states that these tariff revisions are designed to implement an increase in the maximum Gas Research Institute (GRI) surcharge as authorized by the Commission's order issued on October 13, 1995 in Docket No. RP95-374-000. Specifically, Kern River proposes to implement the following GRI surcharges for transportation under Rate Schedules KRF-1, CH-1, UP-1, MO-1, SH1 and KR1-I as follows:

(1) For firm transportation customers with load factors greater than 50%, a maximum monthly reservation surcharge of \$0.2761 per Mcf.

(2) For firm transportation customers with load factors less than or equal to 50%, a maximum monthly reservation surcharge of \$0.1699 per Mcf.

(3) For firm transportation, authorized overrun and interruptible transportation customers, a maximum usage surcharge of \$0.0093 per Mcf.

Kern River states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Under § 154.209, all such motions or protests must be filed on or before December 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 95-29626 Filed 12-5-95; 8:45 am]
BILLING CODE 6717-01-M

¹ 15 U.S.C. 3301(16).

[Docket No. TM96-1-2-001]**East Tennessee Natural Gas Company, Notice of Filing**

November 30, 1995.

Take notice that on November 27, 1995, East Tennessee Natural Gas Company (East Tennessee) submitted Substitute Fifth Revised Sheet No. 4 of its FERC Gas Tariff, Second Revised Volume No. 1. Revised Sheet No. 4 reflects the reduction of the current demand and commodity adjustments under Article 25 of its General Terms and Conditions. East Tennessee requests an effective date of November 1, 1995.

On September 29, 1995, East Tennessee Natural Gas Company filed Fifth Revised Sheet No. 4 to implement its Annual Transportation Cost Rate (TCRA) Adjustment for service under its Rate Schedules FT-A and FT-GS, as well as revised surcharges for amortization of the demand and commodity balances of its Unrecovered Transportation Cost Account. On October 27, 1995, the Commission issued an order accepting and suspending the filing to be effective November 1, 1995, subject to refund and conditions, and establishing a technical conference.

With this filing, East Tennessee is proposing a reduction in its projected demand and commodity expense for the period November 1, 1995 through October 31, 1996. These reductions as more fully described in its filing result in current adjustments of zero. East Tennessee proposes no change to its demand or commodity surcharge adjustments of negative \$.01 and negative \$.0013, respectively, filed September 29th.

East Tennessee further submits that on November 21, 1995 it filed with the Commission to suspend East Tennessee's obligation to respond to the Commission's data response on November 27, 1995, pending the instant filing of revised tariff sheets and Atlanta's withdrawal of its protest and request for technical conference.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to make any protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. Under § 154.209, all such protests should be filed on or before December 11, 1995. Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95-29628 Filed 12-5-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP96-86-000]**National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization**

November 30, 1995.

Take notice that on November 24, 1995, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP96-86-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a sales tap connection for the delivery of gas to William Baird, a new residential customer of National Fuel Gas Distribution Corporation (Distribution), on National's Line N-M54, in Sandy Lake Township, Mercer County, Pennsylvania, under the blanket certificate issued in Docket No. CP83-4-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

National estimates that total deliveries to be delivered through the proposed facility is 150 Mcf annually pursuant to National's Rate Schedule EFT. National asserts that this service will have a minimal impact on its peak day and annual deliveries. National claims that the volumes to be delivered at the proposed tap will be within the certificated entitlements of National's customer, Distribution. National states that Distribution is authorized to transport gas on behalf of William Baird. National estimates that the total cost of construction for this tap will be approximately \$1,500, for which National will be reimbursed by Distribution.

National asserts that it has received the applicable environmental clearances to perform construction of residential sales taps in Pennsylvania.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice

of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95-29636 Filed 12-5-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP96-81-000, CP96-83-000, and CP96-84-000]**Norteño Pipeline Company and Western Gas Interstate Company; Notice of Applications**

November 30, 1995.

Take notice that on November 22, 1995, Norteño Pipeline Company (Norteño) and Western Gas Interstate Company (WGI) (collectively Applicants), both at 504 Lavaca Street, Austin, Texas 78701, filed in Docket No. CP96-81-000, a joint application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for certifications of public convenience and necessity and for an order granting permission and approval to transfer facilities and services. By this application, Norteño requests a certificate of public convenience and necessity authorizing it to acquire and operate certain WGI facilities and to perform the services of WGI, and to transport and sell natural gas for resale in interstate commerce in the same manner as conducted by WGI. WGI has requested companion authority to transfer certain of its jurisdictional facilities, operations and services to Norteño. In addition, Norteño requests (1) a blanket certificate pursuant to Part 284, Subpart G of the Commission's Regulations authorizing the transportation of natural gas on behalf of others, and (2) a blanket certificate pursuant to Part 157, Subpart F authorizing certain construction and operation of facilities, sales arrangements and certain certificate amendments and abandonment under Section 7 of the Natural Gas Act.

Pursuant to Sections 153.1 and 153.10 through 153.12 of the Commission's Regulations, and Executive Order 10485, as amended by Executive Order

12038, and Secretary of Energy Delegation Order No. 0204-112, Applicants, in Docket No. CP96-83-000, request authorization for Norteño to succeed to the Presidential Permit issued to WGI in Docket Nos. CP69-236 and CP91-2126-000. The Presidential Permit covers the operation of pipeline facilities at the United States-Mexico border. The authorization sought by this application does not seek any change in the terms and conditions of WGI's existing Presidential Permit apart from the succession of Norteño as the holder of that authority.

In addition, pursuant to Section 3 of the Natural Gas Act and Sections 153.1 through 153.8 of the Commission's Regulations Applicants, in Docket No. CP96-84-000, request authorization to succeed to all of WGI's existing authorizations to import and export natural gas. The authorization sought by this application does not seek any change in the terms and conditions of WGI's existing import and export authority apart from the succession of Norteño as the holder of that authority. All of this is more fully set forth in the applications which are on file with the Commission and which are open to the public for inspection.

Applicants request that these authorizations be made effective no later than April 1, 1996, the first fully day of operation of Norteño. In addition, Applicants state that the sole purpose of these applications is to restructure WGI as a natural gas company by transferring certain of its system operations to Norteño. Applicants further state that the proposed applications will have no adverse impact on any of the existing services of WGI and there will be no disruption or interruption of current services.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 21, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 3, 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificates and permission and approval for the proposed authorizations and abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95-29637 Filed 12-5-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT96-34-000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 30, 1995.

Take notice that on November 22, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Original Volume No. 2, which tariff sheets are enumerated in Appendix A attached to the filing. The proposed effective date of such tariff sheets is January 1, 1996.

Transco states that the purpose of the instant filing is to terminate Section 7(c) firm transportation service under Rate Schedules X-287 and X-288 and to convert such services to service provided under Rate Schedule FT pursuant to Transco's blanket transportation certificate and Part 284 of the Commission's Regulations effective January 1, 1996. In that regard, Transco and its APEC shippers have agreed that, as part of the conversion process, converting APEC shippers will be entitled to elect annual firm transportation service in lieu of seasonal (November 15 through March 31) service. Long Island Lighting Company (LILCO) and New Jersey Natural Gas Company (New Jersey) have notified Transco of their election to convert their

APEC service to annual firm transportation service.

Transco states that the rates applicable to the converted service are the generally applicable charges under Rate Schedule FT (including fuel), plus reservation and commodity rate surcharges as set forth on Original Sheet No. 40E to Transco's Third Revised Volume No. 1 Tariff. Original Sheet No. 40E sets forth the charges applicable to APEC firm transportation service which has been converted from individually certificated Section 7(c) firm transportation service to annual firm transportation service under Transco's blanket certificate and Part 284 of the Commission's regulations.

Transco states that copies of the filing are being mailed to LILCO, New Jersey and interested State Commissions.

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, 888 First Street, N.E. Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. Under Section 154.209, all such motions or protests should be filed on or before December 4, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95-29638 Filed 12-5-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. IS94-32-000]

Chevron Pipe Line Co.; Notice of Informal Settlement Conference

November 30, 1995.

Take notice that Commission Staff will convene an informal settlement conference in this proceeding on December 6, 1995, at 11:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Donald Heydt at (202) 208-0740 or Russell Mamone at (202) 208-0744. Lois D. Cashell,
Secretary.

[FR Doc. 95-29633 Filed 12-5-95; 8:45am]

BILLING CODE 6717-01-M

[Docket No. ER95-557-000]

Jersey Central Power & Light Co.; Notice of Filing

November 30, 1995.

Take notice that on November 3, 1995, Jersey Central Power & Light Company tendered for filing an amendment in the above-referenced docket.

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, 888 First 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 December 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 95-29634 Filed 12-5-95; 8:45 am]

BILLING CODE 6717-11-M

[Docket No. CP96-85-000]

National Fuel Gas Supply Corp.; Notice of Application for Abandonment

November 30, 1995.

Take notice that on November 24, 1995, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP96-85-000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment of certain minor underground natural gas storage facilities in Elk County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel states that it proposes to abandon wells and well lines in its St.

Mary's storage field in the city of St. Mary's, Elk County, Pennsylvania. National Fuel relates that these wells and lines are located in a poor deliverability area of the St. Mary's reservoir and are used for observation purposes only. National Fuel estimates the cost of abandoning the instant facilities will be \$60,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 21, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 95-29635 Filed 12-5-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER96-319-000, et al.]

Entergy Power Inc., et al.; Electric Rate and Corporate Regulation Filings

November 28, 1995.

Take notice that the following filings have been made with the Commission:

1. Entergy Power, Inc.

[Docket No. ER96-319-000]

Take notice that on November 8, 1995, Entergy Power, Inc. (EPI), tendered for filing a Power Purchase and Sale Agreement with South Carolina Public Service Authority.

Comment date: December 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company

[Docket No. ER96-320-000]

Take notice that on November 8, 1995, New England Power Company (NEP), filed an Assignment and Release, dated October 23, 1995 (Assignment), between Canal Electric Company, Commonwealth Electric Company and NEP. NEP requests waiver for good cause shown of the Commission's sixty (60) day notice requirement (18 CFR 35.3).

Comment date: December 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER96-321-000]

Take notice that on November 8, 1995, Florida Power & Light Company (FPL), filed the Contract for Sales of Power and Energy by FPL to the Tennessee Valley Authority.

Comment date: December 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER96-322-000]

Take notice that on November 9, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Companies), filed a Service Agreement between GPU and North Jersey Energy Associates, a Limited Partnership (North Jersey), dated October 23, 1995. This Service Agreement specifies that North Jersey has agreed to the rates, terms and conditions of the GPU Companies' Energy Transmission Service Tariff accepted by the Commission on September 28, 1995 in Docket No. ER95-791-000 and designated as FERC Electric Tariff, Original Volume No. 3.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 9, 1995 for the Service Agreement. GPU has served copies of the filing on regulatory agencies in New

Jersey and Pennsylvania and on North Jersey.

Comment date: December 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company
[Docket No. ER96-323-000]

Take notice that on November 9, 1995, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Louis Dreyfus Electric Power Inc., under Rate GSS.

Comment date: December 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company
[Docket No. ER96-324-000]

Take notice that on November 9, 1995, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Rainbow Energy Marketing Corp. under Rate GSS.

Comment date: December 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company
[Docket No. ER96-325-000]

Take notice that on November 9, 1995, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Catex Vitol Electric under Rate GSS.

Comment date: December 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company
[Docket No. ER96-326-000]

Take notice that on November 9, 1995, Florida Power & Light Company (FPL), filed the Contract for Purchase and Sales of Power and Energy Between FPL and the City of Gainesville.

Comment date: December 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER96-327-000]

Take notice that on November 9, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement to provide interruptible transmission service for Commonwealth Electric Company (CEC).

Con Edison states that a copy of this filing has been served by mail upon CEC.

Comment date: December 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER96-328-000]

Take notice that on November 9, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Industrial Energy Applications (IEA) dated October 20, 1995 providing for certain transmission services to IEA.

Copies of this filing were served upon IEA and the New York State Public Service Commission.

Comment date: December 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER96-329-000]

Take notice that on November 9, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Tennessee Valley Authority and Virginia Power, dated November 1, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Tennessee Valley Authority under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER96-330-000]

Take notice that on November 9, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Duquesne Light Company and Virginia Power, dated November 1, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Duquesne Light Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission and the Pennsylvania Public Utility Commission.

Comment date: December 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Electric Energy, Inc

[Docket No. ES96-14-000]

Take notice that on November 21, 1995, Electric Energy, Inc. filed an application under § 204 of the Federal Power Act seeking authorization to issue up to \$70 million in short-term notes under the unsecured revolving credit agreements it has with The Boatmen's National Bank of St. Louis and the Mercantile Bank of St. Louis National Association, from time to time over the 24-month period immediately following the date of the Commission's approval of the application.

Comment date: December 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard 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, 888 First 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. 95-29639 Filed 12-5-95; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER96-331-000, et al.]

**New England Power Company, et al.;
Electric Rate and Corporate Regulation
Filings**

November 29, 1995.

Take notice that the following filings have been made with the Commission:

1. New England Power Company

[Docket No. ER96-331-000]

Take notice that on November 9, 1995, New England Power Company (NEP), tendered for filing Supplements to its Service Agreement with Hingham (Mass.) Light Plant under NEP's FERC Electric Tariff, Original Volume No. 3.

Comment date: December 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. PowerMark, L.L.C.

[Docket No. ER96-332-000]

Take notice that on November 9, 1995, PowerMark, L.L.C. tendered for filing an application asking for blanket authorizations and certain waivers of the Commission's regulations to enable it to act as a power marketer.

PowerMark, L.L.C. asks that these authorizations and waivers be made effective on January 7, 1996, or upon the date that the Commission issues an order in this docket, whichever first occurs.

Comment date: December 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Portland General Electric Company

[Docket No. ER96-333-000]

Take notice that on November 13, 1995, Portland General Electric Company (PGE), tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a copy of its proposed FERC Electric Tariff, Original Volume No. 5 (Point-to-Point Transmission Service Tariff) and FERC Electric Tariff, Original Volume No. 6, (Network Integration Transmission Service Tariff).

PGE requests an effective date of February 29, 1995 be assigned to the Tariffs.

Copies of this filing were served upon the list of entities appearing on the Certificate of Service attachment of the filing letter.

Comment date: December 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. The Montana Power Company

[Docket No. ER96-334-000]

Take notice that on November 13, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, open access transmission tariffs consisting of Montana's proposed: 1) FERC Electric Tariff, Original Volume No. 2 (Point-to-Point Transmission Service Tariff); 2) FERC Electric Tariff, Original Volume No. 3 (Network Integration Transmission Service Tariff); and 3)

FERC Electric Tariff, Original Volume No. 4 (Control Area Services Tariff).

Montana requests that the Commission accept the tariffs for filing, effective as of January 1, 1996.

A copy of the filing was served upon Basin Electric Power Cooperative; Billings Generation, Inc.; Bonneville Power Administration; Central Montana Electric Power Cooperative, Inc.; Idaho Power Company; Montana Consumer Counsel; Montana Department of Environmental Quality; Montana Public Service Commission; Northwest Regional Transmission Association; Western Area Power Administration; Western Montana Electric Generating & Transmission Cooperative, Inc.; and Western Regional Transmission Association.

Comment date: December 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER96-335-000]

Take notice that on November 13, 1995, Massachusetts Electric Company, tendered for filing rate changes to its FERC Electric Tariff, Original Volume No. 1 for borderline sales.

Comment date: December 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company

[Docket No. ER96-337-000]

Take notice that on November 13, 1995, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Catex Vitol Electric under Rate GSS.

Comment date: December 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company

[Docket No. ER96-338-000]

Take notice that on November 13, 1995, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric and Louis Dreyfus Electric Power Inc. under Rate GSS.

Comment date: December 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER96-339-000]

Take notice that on November 13, 1995, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern

Companies), tendered for filing an Interchange Service Contract between Southern Companies and Koch Power Services, Inc. The Interchange Service Contract establishes the terms and conditions of power supply, including provisions relating to service conditions, control of system disturbances, metering and other matters related to the administration of the agreement.

Comment date: December 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company

[Docket No. ER96-340-000]

Take notice that on November 13, 1995, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: December 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Boston Edison Company

[Docket No. ER96-341-000]

Take notice that on November 13, 1995, pursuant to 18 CFR Part 35 of the Commission's Rules and Regulations, 18 CFR Part 35, Boston Edison Company (BECO) filed a Preliminary Support Agreement under which BECO will determine a scope of work necessary to develop an emergency backup supply for New England Power Company's service to the City of Quincy, Massachusetts.

BECO requests waiver of the Commission's sixty (60) day notice requirement and requests that the agreement be permitted to become effective December 1, 1995.

Comment date: December 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard 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, 888 First 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. 95-29640 Filed 12-5-95; 8:45 am]

BILLING CODE 6717-01-P

[Project No. 1988 No. 1988-007]

Pacific Gas and Electric Co.; Notice of Availability of Draft Environmental Assessment

November 30, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Haas-Kings River Hydroelectric Project, located near the towns of Centerville, Fresno, and Sanger in Fresno County, California and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. Please affix "Haas-Kings River Hydroelectric Project No. 1988" to all comments. For further information, please contact Frankie Green at (202) 501-7704.

Lois D. Cashell,

Secretary.

[FR Doc. 95-29632 Filed 12-5-95; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 11560-000, et al.]

Hydroelectric Applications [Energy 2001, Inc., et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of Application: Preliminary Permit.

b. Project No.: 11560-000.

c. Date filed: October 16, 1995.

d. Applicant: Energy 2001, Inc.

e. Name of Project: Halsey Forebay Project.

f. Location: On Pacific Gas & Electric Company's (PG&E) existing Bear Canal, which diverts water from the Bear River, and Halsey Forebay, near the town of Auburn, in Placer County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: David S. Fitzpatrick, President, Energy 2001, Inc., 1220 Skyline Blvd., Reno, Nevada 89509, (702) 825-2034.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219-2827.

j. Comment Date: January 18, 1996.

k. Description of Project: The proposed project would be located entirely within the project boundary of PG&E's existing Drum-Spaulling Project (FERC No. 2310), and would utilize PG&E's existing Bear Canal and Halsey Forebay. The project would develop the head difference between the canal and the forebay, and include: (1) an intake on the canal; (2) two 240-foot-long, 60-inch-diameter penstocks leading to a powerhouse; (3) the powerhouse containing one generating unit with an installed capacity of 750 kW; (4) a tailrace emptying water into the Halsey Forebay; (5) an 1,800-foot-long transmission line interconnecting with an existing PG&E transmission line across from the forebay (the transmission line route has not yet been determined); and (6) appurtenant facilities.

No new access roads will be required to conduct the studies.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

2a. Type of Application: Preliminary Permit.

b. Project No.: 11561-000.

c. Date filed: October 25, 1995.

d. Applicant: Alaska Village Electric Cooperative, Inc.

e. Name of Project: Old Harbor Project.

f. Location: Partially within the Kodiak National Wildlife Refuge (administered by the U.S Fish and Wildlife Service), on an unnamed tributary to Sitkalidak Strait, near the town of Old Harbor, on Kodiak Island, Alaska. Sections 12, 13, 18, 19, and 20 in R26W, T34S.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Charles Y. Walls, General Manager, Alaska Village Electric Cooperative, 4831 Eagle Street,

Anchorage, Alaska 99503-7497, (907) 561-1818.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219-2827.

j. Comment Date: January 18, 1996.

k. Description of Project: The proposed Old Harbor Project would consist of: (1) a four-foot-high concrete diversion structure with an intake on the unnamed tributary to Sitkalidak Strait; (2) a 3,293-foot-long, 16-inch-diameter HDPE pipeline; (3) an 10,259-foot-long, 16-inch-diameter steel penstock; (4) a powerhouse containing one generating unit with an installed capacity of 330 kW; (5) a 4,270-foot-long transmission line interconnecting with an existing transmission line in the city of Old Harbor; and (6) appurtenant facilities.

No new access roads will be required to conduct the studies.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3a. Type of Application: Preliminary Permit.

b. Project No.: 11562-000.

c. Date filed: October 25, 1995.

d. Applicant: Robert Craig.

e. Name of Project: Icy Gulch Project.

f. Location: On Sheep Fork and two unnamed tributaries of Carlson Creek (one which is referred to locally as Icy Gulch), about five miles east of Juneau, Alaska. The project is located partially within the Tongass National Forest, with the remainder lands being owned by the state of Alaska. Sections 22, 23, 27, 28, 32, and 33 in T41S, R68E. Section 5 in T42S, R68E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Robert Craig, P.O. Box 20422, Juneau, AK 99802, (907) 364-2818.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219-2827.

j. Comment Date: January 18, 1996.

k. Description of Project: The applicant proposes to construct a 77-foot-high dam on Icy Gulch to enlarge an existing 25-acre lake owned by the National Forest Service to 95 acres. The project would also include: (1) A small diversion structure on the unnamed tributary of Carlson Creek diverting water through a 400-foot-long pipeline to the enlarged lake; (2) a 5,500-foot-long, 15-foot-diameter tunnel leading out of the lake; (3) an 11,000-foot-long, 36-inch-diameter buried steel penstock connecting the tunnel to a powerhouse; (4) the powerhouse, located at the mouth of Sheep Creek, containing two generating units with a total installed capacity of 9.0 MW; and (5) appurtenant facilities.

The lake on Icy Gulch and the unnamed tributary of Carlson Creek,

which are the sources of water for the project, are located in a different basin than Sheep Creek, which is where the powerhouse is located.

No transmission line is proposed since the powerhouse will be located adjacent to the existing Thane substation.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4a. Type of Application: Transfer of License.

b. Project No.: 5334-016.

c. Date Filed: October 10, 1995.

d. Applicants: Joint Ypsilanti Recreation Organization and the Charter Township of Ypsilanti.

e. Name of Project: Ford Lake.

f. Location: On the Huron River in Washtenaw County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Robert C. Evans, 4572 Sequoia Trail, Okemos, MI 48864, (517) 351-5400.

i. FERC Contact: Thomas Papsidero, (202) 219-2715.

j. Comment Date: January 2, 1996.

k. Description of Filing: Application to transfer the license for the Ford Lake Project to the Charter Township of Ypsilanti.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

5a. Type of Application: New Major License.

b. Project No.: 2539-003.

c. Date Filed: December 23, 1991.

d. Applicant: Niagara Mohawk Power Corporation.

e. Name of Project: School Street Hydroelectric Project.

f. Location: Mohawk River, Albany and Saratoga Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Jerry Sabattis, Hydro Licensing Coordinator, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 474-1511.

i. FERC Contact: Edward R. Meyer (202) 208-7998.

j. Deadline Date: See paragraph D10.

k. Status of Environmental Analysis: The Commission has waived the applicant's responsibility to respond to an additional information request for entrainment and mortality studies at the School Street Project. The application has been accepted for filing and is ready for environmental analysis at this time with one exception. The settlement negotiations among the applicant, resource agencies, and other parties have not yet closed. The details of any settlement offer that emerges from those

negotiations will be considered in the environmental assessment after filing of such an offer with the Commission. In the interim, environmental analysis will proceed on all other issues as presented during scoping and in the application materials—see attached paragraph D10. No second REA notice will be issued.

1. Description of Project: The School Street Project is located on the Mohawk River approximately 2 miles from its confluence with the Hudson River in Albany and Saratoga counties, New York. The applicant owns the dam and operates the project as a pulsing facility. The dam creates a 100 Ac impoundment with a normal maximum water surface elevation of 156.1 ft msl, a usable storage capacity of 270 ac-ft, and a gross storage capacity of 788 ac-ft. The normal maximum vertical fluctuation of the water surface is 3 ft.

Project structures include: (a) A masonry gravity dam; (b) an upper gatehouse with nine timber slide gates and three steel Taintor gates; (c) a canal that leads to the lower gatehouse; (d) a lower gatehouse which consists of five steel headgates that lead to the penstocks; (e) an ice sluice adjacent to the lower gatehouse with three openings which converge into a single sluiceway; (f) five steel penstocks that feed the turbines; and (g) a powerhouse that houses five vertical Francis turbine-generator units and associated controls and equipment.

The total installed capacity of the project is 38.8 MW, an annual average energy generation of 177,700 MWh with a hydraulic capacity of 5,910 cfs. The facility creates a 4,500-ft-long bypass reach between the dam and the powerhouse tailrace. The bypass currently receives no minimum flows. The powerhouse operates under a gross head of 94 ft. There are no transmission lines or facilities included in the existing project.

The applicant proposed to replace the runners for Units 3 and 5 at the powerhouse with modern design runners to improve efficiency and increase plant life. The applicant would install a new 3,000 cfs vertical Kaplan unit, increasing the installed capacity of the project from 38.8 MW to 59.8 MW. The additional generator would require expansion of the existing powerhouse. The applicant would construct a new steel penstock to service the added unit from a new intake area at the southern end of the lower gatehouse to the new powerhouse addition.

To allow for the increased hydraulic capacity needed for the new unit, the applicant would excavate the canal, removing approximately 103,000 cubic yards of rock. The proposed maximum

discharge is 8,850 cfs with proposed normal fluctuation limits of 1 ft. Minimum flows in the bypass reach would be 60 cfs, and base flow through the turbines would be 600 cfs.

Proposed recreational enhancements include redevelopment of Overlook Park downstream of Cohoes Falls in the city of Cohoes.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Location of Application: A copy of this application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Washington, D.C., 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202, or by calling (315) 474-1511.

6a. Type of Application: Surrender of License.

b. Project No.: 3195-068.

c. Date Filed: November 2, 1995.

d. Applicant: Sayles Hydro Associates.

e. Name of Project: Sayles Flat Project. f. Location: South Fork American River, El Dorado County, California.

g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a)-825(r).

h. Applicant Contact: Mr. Steven Strasser, Sayles Hydro Associates, 11100 N.E. 8th Street, Suite 550, Bellevue, WA 98004, (206) 453-9800.

i. FERC Contact: Hillary Berlin, (202) 219-0038.

j. Comment date: January 6, 1996.

k. Description of Project: The licensee states that they are unable to obtain an appropriate power contract, and that all funds for the project have been exhausted.

1. The notice also consists of the following standard paragraphs: B, C1, and D2.

7a. Type of Application: Major License.

b. Project No.: 11214-001.

c. Date Filed: February 22, 1995.

d. Applicant: Southwestern Electric Cooperative, Inc.

e. Name of Project: Carlyle Reservoir.

f. Location: On the Kaskaskia River near the City of Carlyle, Clinton County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Applicant Contact: Mr. Robert Weinberg, 1615 M Street, N.W.—Suite 800, Washington, DC 20036, (202) 467-6370.

i. FERC Contact: Charles T. Raabe (202) 219-2811.

j. Deadline Date: January 22, 1996.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph D7.

l. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Carlyle Dam and Reservoir and would consist of: (1) An intake structure, placed below pool surface, which includes a fish screen/trashrack with 1.5-inch spaced horizontal bars; (2) five intake conduits (penstocks), each with a 96-inch inside diameter, approximately 680 feet long, placed about 500 feet east of the center of the spillway; (3) a 35-foot-wide by 73-foot-long concrete and brick masonry powerhouse equipped with: (a) five semi-kaplan type submersible generating units, each with a rated capacity of 800 kilowatts (kW), two turbines with variable pitch blades and three with fixed pitch blades; and (b) a hydraulic capacity ranging from 200 cubic feet per second (cfs) to 1,700 cfs; (4) a 1,400-foot-long, 5 kilovolt (kV), buried underground section of primary transmission line and a 3,000-foot-long section of above ground transmission line; and (5) appurtenant facilities. The project would have an estimated average annual generation of 26,293,000 kWh. The application was filed during the term of applicant's preliminary permit.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A2, A9, B1, and D7.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Barnes, Henry, Meisenheimer and Gende, Inc., 4658 Gravois Ave., St. Louis, Missouri 63116, (314) 352-8630, and at Southwestern Electric Cooperative, Inc., South Elm Street and Route 40, Greenville, Illinois 62246, (618) 664-1025.

8a. Type of Application: Minor New License.

b. Project No.: 1994-004.

c. Date filed: November 2, 1995.

d. Applicant: Heber Light and Power Company.

e. Name of Project: Snake Creek.

f. Location: Partially within Uintah National Forest, on Snake Creek, in Wasatch County, Utah.

g. Filed Pursuant to: Federal Power Act 16 USC §§ 791(a)-825(r).

h. Applicant Contact: Mr. Alden C. Robinson, Sunrise Engineering, Inc., 25 East 500 North, P.O. Box 186, Fillmore, UT 84631, (801) 743-6151.

i. FERC Contact: Michael Spencer at (202) 219-2846.

j. Description of Project: The existing project consists of: (1) a grated penstock inlet at the entrance to Steamboat Tunnel; (2) a 16,417-foot-long, 16-inch-diameter penstock; (3) a powerhouse containing one generating unit with a capacity of 800 Kw and an average annual generation of 4.3 Gwh; and (4) a 12.4 KV transmission line.

k. With this notice, we are initiating consultation with the STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory council on Historic Preservation, 36 CFR 800.4.

1. Under Section 4.32 (b)(7) of the Commission's Regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the date of this notice, and must serve a copy of the request on the applicant.

9a. Type of Application: Amendment of Buffer Zone Management Plan.

b. Project No: 2833-044.

c. Date Filed: September 29, 1995.

d. Applicant: Lewis County Public Utility District No. 1.

e. Name of Project: Cowlitz Falls Project.

f. Location: Lewis County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Gary Kalich, Lewis County Public Utility District No. 1, P.O. Box 330, Chehalis, WA 98532, (206) 748-9261.

i. FERC Contact: Heather Campbell, (202) 219-3097.

j. Comment Date: January 12, 1996.

k. Description of Project: The Buffer Zone Management Plan (Plan), approved by the Commission in an order issued April 3, 1989, required the licensee to acquire the buffer zone in fee simple ownership. Lewis County Public Utility District No. 1 is requesting approval to amend its Plan to permit acquisition of the buffer zone through a perpetual easement with local property owners rather than fee simple purchase.

Out of 900 acres in the buffer zone, the licensee proposes to acquire approximately 133 acres through the perpetual easement.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no

later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION",

"PROTEST", "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, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in 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, 888 First Street, N.E., Washington, D.C. 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.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING

APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (January 16, 1996 for Project No. 2539-003). All reply comments must be filed with the Commission within 105 days from the date of this notice (February 29, 1996 for Project No. 2539-003).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply

with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: November 30, 1995, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 95-29641 Filed 12-5-95; 8:45 am]

BILLING CODE 6717-01-P

Notice of Application Tendered for Filing With the Commission

November 30, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. Type of Application: Major License.
- b. Project No. 11301-001.
- c. Date filed: November 8, 1995.
- d. Applicant: Fall Line Hydro Company, Inc.
- e. Name of Project: Carters Reregulation Dam Project.
- f. Location: On the Coosawatte River, near the town of Calhoun, Murray County, Georgia.
- g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)-825(r).
- h. Applicant Contact: Mr. Robert A. Davis III, Fall Line Hydro Company, Inc., P.O. Box 2143, Lawrenceville, GA 30246, (770) 995-0891.
- i. FERC Contact: Michael Dees (202) 219-2807.
- j. Comment Date: 60 days from the filing date in paragraph c.
- k. Description of Project: The project would utilize the U.S. Army Corps of Engineers' Carters Reregulation Dam and reservoir and would consist of the following features: (1) a proposed intake structure; (2) a proposed powerhouse housing a three hydropower units with a total capacity of 4,500 kW; (3) a proposed 12.48 kV transmission line one half mile long; and (4) appurtenant facilities.
- l. With this notice, we are initiating consultation with the Georgia State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 C.F.R. 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

In addition to filing under the above paragraph, requests for additional studies may be submitted on a 3½-inch diskette formatted for MS-DOS based computers. In light of our ability to translate MS-DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, Wordperfect 5.1/5.2, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS-DOS machines.

Lois D. Cashell,

Secretary.

[FR Doc. 95-29631 Filed 12-5-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-221-060, et al.]

Frontier Gas Storage Company, et al. Natural Gas Certificate Filings

November 28, 1995

Take notice that the following filings have been made with the Commission:

1. Frontier Gas Storage Company

[Docket No. CP85-221-060]

Take notice that on November 21, 1995, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., N.W., Suite 800, Washington, D.C. 20004, in compliance with provisions of the Commission's February 13, 1985, Order in Docket No. CP82-487-000, *et al.*, submitted an executed Service Agreement under Rate Schedule LVS-1 providing for the possible sale of up to a daily quantity of 50,000 MMBtu, not to exceed 5 Bcf of Frontier's gas storage inventory on an "as metered" basis to Prairielands Energy Marketing, Inc., for term ending October 31, 1996.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985, Order, Frontier is "authorized to commence the sale of its inventory under such an executed service agreement fourteen days after filing the agreement with the Commission, and may continue making such sale unless the Commission issues an order either requiring Frontier to stop

selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Comment date: 10 days after publication of this notice in the Federal Register, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. National Fuel Gas Supply Corporation

[Docket No. CP96-42-000]

Take notice that on November 3, 1995, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York, 14203, filed in Docket No. CP96-42-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to partially abandon a storage service to Fitchburg Gas and Electric Company (Fitchburg) under Rate Schedule SS-1 and Yankee Gas Services Company (Yankee) under Rate Schedule SS-2, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, National requests authorization, effective April 1, 1996, to partially abandon service to Yankee by reducing its annual SS-2 contract entitlement from 1.5 Bcf to 820,200 Mcf and to partially abandon service to Fitchburg by reducing its annual SS-1 contract entitlement from \$300,000 Mcf to 60,000 Mcf.

Comment date: December 19, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Seahawk Shoreline System

[Docket No. CP96-73-000]

Take notice that on November 17, 1995, Seahawk Shoreline System (Seahawk), having its principal offices at 200 Westlake Park Boulevard, Suite 1000, Houston, Texas 77079, filed a petition requesting that the Commission disclaim jurisdiction over certain of Seahawk's natural gas gathering facilities under Section 1(b) of the Natural Gas Act (NGA).

Seahawk states that the facilities which are the subject of the petition (formerly known as the Seagull Shoreline System) are located entirely within the State of Texas and its state waters, gathering both gas and associated liquids in a two-phase flow from production platforms in the Matagorda Island Area, offshore Texas. Seahawk further states that it is currently classified as an intrastate pipeline. Seahawk states that based on its current status as an intrastate pipeline, it performs transportation under Section 311(a)(2) of the Natural Gas Policy Act (NGPA).

Seahawk contends that the Commission and the courts have reexamined, modified and more clearly delineated the requirements for determining whether a facility qualifies for a gathering exemption from Commission jurisdiction under Section 1(b) of the NGA. The result of these recent actions was the development and implementation of the "modified primary function" test. Seahawk avers that the facilities comprising its system meet this test and therefore, are not subject to Commission jurisdiction. Moreover, Seahawk states that disclaiming jurisdiction over its facilities is consistent with the Commission's regulatory and statutory

objectives under the NGA and the NGPA.
Comment date: December 21, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation Columbia Gulf Transmission Company and Northern Natural Gas Company

[Docket No. CP96-75-000]
 Take notice that on November 17, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314-1599, Columbia Gulf Transmission Company (Columbia Gulf), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314-1599,

and Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000 (jointly as the Companies), filed in Docket No. CP96-75-000 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon exchange services which were once required for the exchange of offshore Louisiana gas, which was authorized in Docket Nos. CP76-191, CP77-649, CP77-657 and CP80-204, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, the Companies are seeking abandonment authority for the following rate schedules:

Docket No.	Order date	Company	Rate schedule
CP76-191	Jan. 4, 1978	Columbia	X-68
CP76-191	.....do	Columbia Gulf	X-48
CP76-191	.....do	Northern	X-57
CP77-657	Jan. 2, 1979	Columbia	X-81
CP77-657	.....do	Columbia Gulf	X-60
CP77-649	.....do	Northern	X-74
CP80-204	June 12, 1980	Columbia	X-95
CP80-204	.....do	Columbia Gulf	X-73
CP80-204	.....do	Northern	X-105

The Companies state that both Columbia and Northern purchased gas from Exxon Corporation (Exxon) at Block 332, Eugene Island Area, offshore Louisiana, and that Columbia Gulf received the gas for Columbia's account at an existing receipt point on Exxon's production platform at Eugene Island Block 314. The Companies state that Northern was unable to take delivery of its Eugene Island Block gas, and the exchange certificated under Docket No. CP76-191 provided for Columbia and Columbia Gulf to take delivery of Northern's gas from Exxon for delayed redelivery to Northern. The Companies state that all gas was on an Mcf-for-Mcf basis. The Companies state when Northern was unable to take the gas into its own system, repayment was effected out of Columbia's share of the gas produced from the Exxon wells.

The Companies state that the exchange certificated under Docket Nos. CP77-657 and CP77-649 provided for Northern to deliver gas to Columbia Gulf for the account of Columbia at the outlet side of Sea Robin Pipeline Company's measurement facilities near Erath, Louisiana and the outlet side of Columbia Gulf's measurement facilities at the Blue Water offshore pipeline system near Egan, Louisiana. The Companies state that Columbia delivered gas to Northern or to

Trunkline Gas Company (Trunkline) for Northern's account at an interconnection between Columbia Gulf and Trunkline near Egan, Louisiana. The Companies state that construction of the interconnection was paid for by Northern and maintained and operated by Columbia Gulf for Northern's account. The Companies state that all exchanges of gas were on an Mcf-for-Mcf basis.

The Companies state that Columbia purchased gas from Exxon in Vermilion Area Block 372, offshore Louisiana and Northern purchased gas from Texasgulf, Inc., West Cameron Area Block 405, offshore Louisiana. The Companies state that the exchange certificated under Docket No. CP80-204 provided for Columbia to deliver up to 20,000 Mcf/d of its Vermilion Block 372 gas to Northern at the producer platform in Vermilion Area Block 372, and for Northern to deliver up to 20,000 Mcf/d of its West Cameron Block 405 gas via Natural Gas Pipeline Company of America, to Columbia Gulf at existing facilities located on producer platforms in West Cameron Area Blocks 616/630, offshore Louisiana. The Companies state that the exchange of gas was on an equivalent Btu basis.

The Companies submit that the proposed abandonments are required by the present and future public

convenience and necessity, as they will eliminate exchange services no longer needed and will permit the Companies to cancel their corresponding Volume II Rate Schedules.

Comment date: December 19, 1995, in accordance with Standard Paragraph F at the end of this notice.

5. Koch Gateway Pipeline Company
 [Docket No. CP96-78-000]

Take notice that on November 20, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP96-78-000 a request pursuant to §§ 157.205 and 157.211(a)(2) of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205, and 157.211) for authorization to construct and install a four-inch delivery tap through which Koch Gateway will make natural gas deliveries to Shell Oil Company's St. Rose Refinery, under Koch Gateway's blanket certificate issued in Docket No. CP82-430-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch Gateway proposes to construct and install a four-inch delivery tap and meter station on its Baton Rouge-New Orleans line, Index 270, in St. Charles Parish, Louisiana. The total proposed

estimated deliveries for these facilities is 5,000 Mcf daily with a peak day estimate of 10,000 Mcf per day. Koch Gateway proposes to make natural gas deliveries under its ITS Rate Schedule. Koch Gateway further states that the service would not have an impact on its curtailment plan because the proposed service is interruptible in nature.

Koch Gateway further states that the estimated cost of the proposed facilities is \$29,200. It is stated that Shell would reimburse Koch Gateway for the cost of the construction of the facilities.

Comment date: January 12, 1996, in accordance with Standard Paragraph G at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP96-80-000]

Take notice that on November 21, 1995, Williams Natural Gas Company (WNG), One Williams Center, P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96-80-000, a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216(b)) for authorization to abandon, by reclaim, measuring and appurtenant facilities originally installed for the delivery of sales gas to (1) Missouri Gas Energy in Jasper County, Missouri; (2) Childress Mine and Quarry in Jasper County, Missouri; (3) Sabreliner Corp. in Newton County, Missouri; and (4) NEO Hospital in Craig County, Oklahoma, under WNG's blanket authorization issued in Docket No. CP82-479-000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that all of the affected customers have agreed to the reclaim of the facilities. WNG further states the total estimated reclaim costs are \$5,460 with an estimated salvage value of \$0.

WNG states it has sent a copy of this filing to the Missouri Public Service Commission and the Oklahoma Corporation Commission.

Comment date: January 12, 1996, in accordance with Standard Paragraph G at the end of this notice.

7. Williams Natural Gas Company

[Docket No. CP96-82-000]

Take notice that on November 22, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96-82-000 a request pursuant to §§ 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization

to relocate and install new metering and appurtenant facilities for Farmland Industries, Inc. (Farmland) and to abandon by sale to Farmland the old meter and regulator settings and approximately 515 feet of 8-inch lateral pipeline all located in Douglas County, Kansas, under WNG's blanket certificate issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states the facilities were installed in 1963 to deliver sales gas to Farmland and do not currently meet the standard design specifications established by the American National Standards Institute and the American Petroleum Institute.

WNG states that it proposes to install a dual run 8-inch meter setting and appurtenant facilities approximately 400 feet north of the existing facilities. WNG states that installing the facilities at the new location will remove them from beneath high voltage power lines, and that the new metering facilities will be in compliance with established industry standards. WNG also states that the new location will eliminate the need for WNG employees to pass through Farmland's security to access WNG's facilities.

WNG states the current volume of gas flowing through the facilities is 78.5 MMcf on a peak day and 17,000 MMcf annually. WNG states that it does not anticipate any change in volume as a result of the proposed replacement.

WNG estimates the construction cost of its proposal to be \$150,660. WNG states that since the meter and regulator settings and the pipeline will be sold in place to Farmland, there is no reclaim cost associated with this project.

WNG submits that this proposal will not significantly affect a sensitive environmental area.

Comment date: January 12, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the

appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 95-29642 Filed 12-5-95; 8:45 am]

BILLING CODE 6717-01-P

[FRL-5340-2]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between May 1, 1994 and September 30, 1995, the United States Environmental Protection Agency (EPA) Region II Office, issued 5 final determinations, the New Jersey Department of Environmental Protection issued 3 final determinations and the New York State Department of

Environmental Conservation (NYSDEC) issued 10 final determinations pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR § 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Frank Jon of the Permitting and Toxics

Support Section, Air Compliance Branch, Division of Air and Waste Management, U.S. Environmental Protection Agency, Region II Office, 290 Broadway, 21st Floor, New York, New York 10007-1866, (212) 637-4085.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region II and the NYSDEC have made final PSD determinations relative to the sources listed below:

Name	Location	Project	Agency	Final action	Date
Eli Lilly Industries, Inc..	Mayaguez, Puerto Rico.	Proposed replacement of a steam boiler at the Mayaguez facility with a new 350 horsepower Cleaver Brooks boiler.	EPA	PSD Non-Applicability.	May 4, 1994.
Mercer and Atlantic County RRF.	Duck Island, New Jersey.	Two—833.8 tons per day MSW combustors each. Each combustor will be equipped with scrubber, baghouse, and carbon injection.	NJDEP	Final PSD Permit.	June 22, 1994.
Sithe Independence.	Oswego, New York.	1012 MW combined-cycle gas turbine (4 GE Frame 7001FA) cogeneration project firing natural gas.	NYSDEC	PSD Permit Modification.	June 29, 1994.
Selkirk Cogeneration Partners, L.P. (Phase I).	Selkirk, New York.	80 MW GE Frame 7 QC cogeneration project firing natural gas with No. 2 distillate oil and propane as a backup fuel.	NYSDEC	PSD Permit Modification.	July 15, 1994.
Virgin Islands Water and Power Authority (VIWAPA) (Units 15 & 18).	St. Thomas, Virgin Islands.	Relaxation of certain "low-load" restrictions for two existing oil-fired gas turbines (Units 15 and 18); deleting conditions prohibiting facility to operate only one of these units in combined-cycle mode at any given time; and allowing facility to burn up to 200,000 gallons per year of "off-spec" oil in two existing steam boilers (Units 11 and 13).	EPA	PSD Permit Modification.	August 24, 1994.
New Jersey Steel Corporation.	Sayreville, New Jersey.	Facility modernized its batch operation to a continuous feed Consteel process including a new larger baghouse, new canopy hood, new higher stack, and higher production rate.	NJDEP	PSD Permit Modification.	September 7, 1994.
LaFarge Corp ..	Syracuse, New York.	Proposed modifications to an existing pneumatic vessel unload system and an internal transfer/silo distribution system.	NYSDEC	PSD Non-Applicability.	September 21, 1994.
Virgin Islands Water and Power Authority (VIWAPA) (Unit 20).	St. Croix, Virgin Islands.	Revision to allow Unit 20 to begin operating for a period of up to 180 days prior to date of installation of PSD-required CEMS.	EPA	PSD Permit Modification.	November 16, 1994.
Saranac Power Partners.	Plattsburgh, New York.	240 MW combined-cycle gas turbine cogeneration project firing natural gas.	NYSDEC	PSD Permit Modification.	November 23, 1994.
Kamine Syracuse Cogeneration Project.	Syracuse, New York.	80 MW Siemens V64 firing natural gas with No. 2 distillate oil as a backup fuel.	NYSDEC	PSD Permit Modification.	December 20, 1994.
Kenetech Energy Systems.	Chateaugay, New York.	20 MW Riley Stoker Boiler firing wood	NYSDEC	PSD Permit Modification.	December 30, 1994.
Hollingsworth and Vose Company.	Easton, New York.	Addition of a new paper machine and the increased use of the boilers at an existing facility.	NYSDEC	PSD Non-Applicability.	March 29, 1995.
Newark Bay Cogeneration.	Newark, New Jersey.	Authorized an increase in the duration of the exemption for fuel transfer periods.	NJDEP	PSD Permit Modification.	April 11, 1995.
LifeSavers Manufacturing, Inc.	Las Piedras, Puerto Rico.	Removal of a GMT generator and a Clayton boiler with the addition of two new Cleaver Brooks boilers.	EPA	PSD Non-Applicability.	May 8, 1995.
Brooklyn Navy Yard Cogen Partners.	Brooklyn, New York.	Change in offset host from Domino Sugar to LILCO.	NYSDEC	PSD Permit Modification.	June 6, 1995.
Auburn Steel Company.	Auburn, New York.	Increase in hourly charging rate of the electric arc furnace from 55 to 85 tons of scrap metal/hour. Applicant has proposed to install a new larger baghouse and an annual production cap to ensure that increases at the proposed project are below the PSD de minimis levels.	NYSDEC	PSD Non-Applicability.	July 3, 1995.

Name	Location	Project	Agency	Final action	Date
Virgin Islands Water and Power Authority (VIWAPA) Unit #21.	St. Thomas, Virgin Islands.	New Unit # 21 at the Krum Bay Generating Station in St. Thomas. It is a 36 MW, simple cycle, oil-fired, GE Frame 6, gas turbine. It will burn No. 2 fuel oil with a maximum sulfur content of 0.2 percent by weight.	EPA	Final PSD Permit.	August 15, 1995.
Bristol-Myers Squibb Co.	Syracuse, New York.	Construction of three air pollution sources (biogas boiler, ground flare, and an odor scrubber). All criteria pollutants capped below the PSD de minimis levels.	NYSDEC	PSD Non-Applicability.	September 29, 1995.

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

United States Environmental Protection Agency, Region II Office, Air Compliance Branch—21 Floor, 290 Broadway, New York, New York 10007-1866

NJDEP Actions

New Jersey Department of Environmental Protection and Energy, Division of Environmental Quality, Bureau of Engineering and Technology, 401 East State Street, Trenton, New Jersey 08625

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233-0001

If available pursuant to the Consolidated Permit Regulations (40 CFR § 124), judicial review of these determinations under Section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the Federal Register. Under Section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: October 30, 1995.

William Muszynski,
Deputy Regional Administrator.

[FR Doc. 95-29738 Filed 12-05-95; 8:45 am]
BILLING CODE 6560-50-P

[FRL-5339-6]

Clean Air Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with 40 CFR 2.301(h)(2) EPA has determined that Trandes Corporation requires access, on a need-to-know basis, to CBI materials submitted to EPA under Title II, Section 208, of the Clean Air Act (CAA). This access is necessary to this contractor's performance under EPA contract number 68-W6-001.

DATES: The transfer of such data to this EPA contractor will occur no sooner than December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Clifford D. Tyree, Project Manager/Freedom of Information Act Officer, Certification Division, Ann Arbor, MI, 48105, telephone (313) 668-4310.

SUPPLEMENTARY INFORMATION: Title II of the Clean Air Act (CAA) requires that manufacturers of light-duty vehicles, light-duty trucks, heavy-duty engines, and motorcycles meet applicable exhaust emission standards. Section 208 of the CAA requires these manufacturers to provide "* * * such information as the Administrator may reasonably require * * *." Because this information is collected under Section 208 of the Act, EPA possesses the authority to disclose said information to its authorized representatives. EPA provides a recommended application format identifying the information needed to support their assertions that their vehicles/engines comply with the applicable emission standards. Each manufacturer is required to submit an application for certification for a certificate of conformity to the applicable regulations. These data include vehicle descriptions, engine/vehicle descriptions, emission control system descriptions and calibrations, and sales information. Under contract No. 68-W6-0001 Trandes Corporation will provide computer data entry and computer application operational services for the Certification Division to process the data submitted by the manufacturers to support their respective exhaust emission and fuel economy programs. This contractor's responsibility is to maintain the

integrity of the transfer of these data. In order to perform this function the contractor may, on a need-to-know basis, have access to these data. The contractor's address is: Trandes Corporation, 4601 Presidents Drive, Suite 360, Lanham, MD 20706.

This contract will prohibit the use of the information for any purpose not specified in the contract; will prohibit the disclosure, in any form, to a third party; and will require that each official and employee of the contractor with access to the confidential information sign an agreement to protect the information from unauthorized release or access.

Dated: November 15, 1995.

Mary Nichols,
Assistant Administrator, for Air and Radiation.

[FR Doc. 95-29743 Filed 12-05-95; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5338-6]

Office of Environmental Justice; Small Grants Program; Solicitation Notice for Fiscal Year (FY) 1996 Environmental Justice Small Grants to Community-Based/Grassroots Organizations and Tribal Governments

Purpose of the Grants Program

The purpose of this grants program is to provide financial assistance to eligible community groups (i.e., community-based/grassroots organizations, churches, or other non-profit organizations) and federally recognized tribal governments that are working on or plan to carry out projects to address environmental justice issues. While state and local governments and academic institutions are eligible to receive grants, preference will be given to community-based/grassroots organizations that are non-profit and incorporated, and federally recognized tribal governments. Funds can be used to develop a new activity or substantially improve the quality of existing programs.

Funding

For FY 1996, the Office of Environmental Justice Small Grants Program will award grants subject to the amount of funds appropriated by Congress. Each of EPA's ten regions are expected to have at least \$100,000 to award grants under this program. A maximum of \$20,000 can be awarded for each grant.

Translations Available

A Spanish translation of this announcement may be obtained by calling the Office of Environmental Justice at 1-800-962-6215.

Hay traducciones disponibles en español. Si usted está interesado en obtener una traducción de este anuncio en español, por favor llame a La Oficina de Justicia Ambiental conocida como "Office of Environmental Justice," línea gratuita (1-800-962-6215).

Important Pre-Application Information

Pre-applications must be postmarked no later than Saturday, March 2, 1996. Pre-applications will serve as the sole basis for evaluation and recommendation for funding. This notice contains all information and forms necessary to submit a pre-application. EPA will award grants based on the merits of the pre-application.

Pre-applications must be mailed to your EPA regional office. A list of addresses and phone numbers for the regional contacts is included at the end of this notice.

Background

In its 1992 report, *Environmental Equity: Reducing Risk for All Communities*, EPA found that minority and low-income populations may experience higher than average exposure to toxic pollutants than the general population. The Office of Environmental Justice (OEJ) was established in 1992 to help these communities identify and assess pollution sources, to implement environmental awareness and training programs for affected residents, and to work with community stakeholders to devise strategies for environmental improvements.

In June of 1993, OEJ was delegated granting authority to solicit, select, supervise, and evaluate environmental justice-related projects, and to disseminate information on the projects' content and effectiveness. Fiscal year (FY) 1994 marked the first year of the OEJ Small Grants Program. Seventy-one (71) grants totaling \$507,000 were awarded in FY 1994 and in FY 1995,

over \$3,000,000 was awarded to 175 small grant recipients.

Eligible Activities

A. How Does EPA Define Environmental Justice Under the Environmental Justice Small Grants Program?

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no groups of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

B. Who May Submit Pre-Applications and May an Applicant Submit More Than One?

Any affected, non-profit community organization or federally recognized tribal government may submit a pre-application upon publication of this solicitation. Applicants must be incorporated and non-profit to receive these federal funds. State recognized tribes or indigenous peoples organizations are able to apply for grant assistance as long as they meet the definition of a non-profit, incorporated organization. "Non-profit organization" means any corporation, trust, association, cooperative, or other organization that 1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; 2) is not organized primarily for profit; and 3) uses its net proceeds to maintain, improve, and/or expand its operations. Individuals are not eligible to receive grants.

EPA will consider only one pre-application per applicant for a given project. Applicants may submit more than one pre-application as long as the pre-applications are for separate and distinct projects or activities.

Applicants who were previously awarded small grant funds may submit an application for FY 1996. The FY 1996 pre-application may or may not have any relationship to the project funded in previous years. Every pre-application for FY 1996 will be evaluated based upon the merit of the proposed project in relation to the other FY 1996 pre-applications, regardless of whether or not the proposal expands a project funded in a previous year.

C. What Types of Projects Are Eligible for Funding?

To be selected for an award, the project must develop and implement surveys, demonstrations, training, or research in areas related to environmental justice programs and activities under at least two of the following statutes:

- a. *Clean Water Act*, Section 104(b) (3);
- b. *Safe Drinking Water Act*, Section 1442(b) (3);
- c. *Solid Waste Disposal Act*, Section 8001(a);
- d. *Clean Air Act*, Section 103(b) (3);
- e. *Toxic Substances Control Act*, Section 10(a);*
- f. *Federal Insecticide, Fungicide, and Rodenticide Act*, Section 20(a);**
- g. *Comprehensive Environmental Response, Compensation, and Liability Act*, Section 311(c);*** and
- h. *Marine Protection, Research, and Sanctuaries Act*, Section 203.

* Projects under this statute are limited to research or development activities.

** Projects under this statute are limited to research activities (e.g., surveys).

*** Projects under this statute are limited to activities related to hazardous substance detection, assessment, and evaluation, and associated human health effects and risks.

D. What Are the Evaluation Criteria for the Program?

EPA will award an Environmental Justice Small Grant after it has determined that the applicant has met at least two of the following three evaluation criteria, and after review of the applicant's qualifications in the narrative section of the grant application. Each applicant is required to provide information on how it meets the evaluation criteria in the grant application.

1. Identify necessary improvements in communication and coordination among all stakeholders, including existing community-based/grassroots organizations and local, state, tribal, and federal environmental programs. Facilitate communication, information exchange, and partnerships among stakeholders to address disproportionate, high and adverse environmental exposure (e.g., workshops, awareness conferences, establishment of community stakeholder committees);

2. Motivate the general public to be more conscious of their local environmental justice issues and involve the community in efforts to address these concerns (e.g., community clean-up projects, monitoring of socioeconomic changes due to disproportionate, high and adverse environmental exposure);

3. Enhance community understanding of environmental and public health information systems and seek technical experts to demonstrate how to access, analyze, and interpret public environmental data (for example, Geographic Information Systems (GIS), Toxic Release Inventories (TRI), and other databases).

Environmental justice projects should enhance critical thinking, problem solving, and the active participation of affected communities in addressing environmental issues. Environmental justice efforts may include, but are not limited to, data gathering techniques that assist communities in their understanding of environmental justice issues. Environmental justice projects should engage and motivate individuals to weigh various concerns and make informed and responsible decisions as they work to remedy disproportionate environmental exposure.

The items discussed above are relative and can be defined differently among applicants from various geographic regions. Each pre-application should define these items as they relate to the specific project. Include a succinct explanation of how the project can serve as a model in other settings and how it addresses a high-priority environmental justice issue. The degree to which a project addresses a high-priority environmental justice issue will vary and must be defined by applicants according to their local environmental justice concerns.

E. How Much Money May Be Requested, and Are Matching Funds Required?

The ceiling for any one grant is \$20,000 in federal funds. Depending on the funds appropriated by Congress, EPA's ten regional offices will each have approximately \$100,000 to issue awards. Applicants are not required to cost share.

F. Are There Any Restrictions on the Use of the Federal Funds?

Yes. EPA grant funds can only be used for the purposes set forth in the grant agreement. Among other things, EPA funds cannot be used for matching funds for other federal grants, construction, personal gifts, buying furniture, litigation, lobbying, or intervention in federal rulemaking or adjudicatory proceedings. Refer to 40 CFR 30.410, entitled "How does EPA determine Allowable Costs?"

The Pre-Application

G. What is a Pre-Application?

The pre-application, which is part of this guidance document, contains four

parts: 1) the "Application for Federal Assistance" form (Standard Form 424/SF 424), 2) the "Budget Information: Non-Construction Programs" form (Standard Form 424A/SF 424A), 3) a work plan, and 4) certifications/assurances forms. These documents contain all the information EPA needs to evaluate the merits of your pre-application. Finalists may be asked to submit additional information to support their projects.

H. How Must the Pre-Application Be Submitted and What Must the Standard Forms (SF) 424 and (SF) 424A, and the Work Plan Include?

The applicant must submit the original pre-application signed by a person duly authorized by the governing board of the applicant and one copy of the pre-application (double-sided encouraged). Pre-applications must be reproducible (for example, stapled once in the upper left hand corner, on white paper, and with page numbers).

As described above, a pre-application contains an SF 424, SF 424A, a work plan, and certifications/assurances forms. The following list describes the requirements for these documents. (The percentages next to the following items represent the weights EPA will use to evaluate the applicant's pre-application). Please note that certain sections are given greater weight than others.

Pre-application Materials: 1. Application for Federal Assistance (SF 424). An SF 424 is an official form required for all federal grants that requests basic information about the applicant and the proposed grant project. A completed SF 424 must be submitted as part of your pre-application. This form, along with instructions and a completed sample, is included at the end of this notice. (5%)

2. Budget Information: Non-Construction Programs (SF 424A). An SF 424A is an official form that requires the applicant to provide basic information on how the federal and non-federal share (if any) of funds will be used. A completed SF 424A must be submitted as part of your pre-application. For the purposes of this grants program, complete only the non-shaded areas. The SF 424A form, and a completed sample, is included at the end of this notice. (5%)

3. Work Plan. A work plan describes the applicant's proposed project. Work plans must be no more than five pages total. One page is one side of a single-spaced typed page. The pages must be letter size (8½" x 11"), with normal type size (10 or 12 cpi) and at least 1" margins. The only appendices and

letters of support that EPA will accept are a detailed budget, resumes of key personnel, and commitment letters. (85%-delineated below)

Work plans must be submitted in the format described below:

I. A concise introduction of no more than one page that states the nature of the organization, how the organization has been successful in the past, purpose of the project, project completion plans, target audience, and expected results (10%).

II. A concise project description of no more than four pages that describes how the applicant plans to meet at least two of the three evaluation criteria outlined in Question D on page 4 of this notice ("What are the Evaluation Criteria for the Program?"). Additional credit will not be given for projects that fulfill more than two criteria (60%).

III. A conclusion of no more than one page discussing how the applicant will evaluate the success of the project, including the anticipated benefits and challenges in implementing the project (10%).

IV. An appendix with no more than two pages of resumes of up to three key personnel (5%).

V. An appendix with one page letters of commitment from other organizations with a significant role in the project. Letters of endorsement are not acceptable (No percentage assigned).

4. Certifications/Assurances. The federal government requires all grantees to certify and assure that they will comply with a variety of federal laws, regulations, and requirements. The two certifications/assurances forms must be signed and included in the application. (5%)

I. When and Where Must Pre-Applications Be Submitted?

The original plus one copy of the pre-application must be mailed to the EPA regional office where the applicant is located postmarked no later than Saturday, March 2, 1996. A list of the EPA regional office addresses (with the names of the regional contacts) and a list of the states that these offices support are included at the end of this notice.

Review and Selection Process

J. How Will Pre-Applications Be Reviewed?

EPA regional offices will review, evaluate, and select grant recipients. Pre-applications will be screened to ensure they meet all eligible activities described in Questions A, B, C, D, E, F, G, H, and I. Applications will be disqualified if they do not meet EPA's basic criteria.

K. How Will the Final Selections Be Made?

After the individual projects are reviewed and ranked, EPA officials in the regions will compare the best pre-applications and make final selections. Additional factors that EPA will take into account include geographic and socioeconomic balance, diverse nature of the projects, cost, and projects whose benefits can be sustained after the grant is completed. Regional Administrators will select the grants with concurrence from the Director of the Office of Environmental Justice at EPA Headquarters.

Please note that this is a very competitive grants program. Limited funding is available and many grant applications are expected to be received. Therefore, the Agency cannot fund all applications.

L. How Will Applicants Be Notified?

After all pre-applications are received, EPA regional offices will mail acknowledgments to applicants in their regions. Once pre-applications have been recommended for funding, the EPA regions will notify the finalists and request any additional information necessary to complete the award process. The EPA Regional Environmental Justice Coordinators or their designees will notify those applicants whose projects were not funded.

Grant Activities**M. How Much Time Do Grant Recipients Have to Complete Projects?**

Activities must be completed within the time frame specified in the grant award, usually one year.

N. Who Will Perform Projects and Activities?

The recipient organization is responsible for the successful completion of the project. The recipient's project manager is subject to approval by the EPA project officer but EPA may not direct that any particular person be the project manager.

O. What Reports Must Grant Recipients Complete?

All recipients must submit final reports for EPA approval within ninety (90) days of the end of the project period. Specific report requirements (for example, Final Technical Report and Financial Status Report) will be described in the award agreement. EPA will collect, evaluate, and disseminate grantees' final reports to serve as model programs. Since networking is crucial to the success of the program, grantees

may be required to submit an extra copy to a central collection point.

P. What is the Expected Time-frame for the Review and Awarding of the Grants?

December 1, 1995—Request for Applications Notice (RFA) is published in the Federal Register.

December 1, 1995 to March 1, 1996—Eligible grant recipients develop their pre-applications.

March 2, 1996—Pre-applications must be postmarked by this date.

March 2, 1996 to April 15, 1996—EPA regional program officials review, evaluate, and select grants.

April 15, 1996 to June 30, 1996—EPA regional grants offices process grants and make awards. Applicants will be contacted by the grants office or program office if their pre-proposal was selected for funding. Additional information may be required from the finalists, as indicated under Question G above.

August 1, 1996—EPA expects to release the national announcement of the FY 96 Environmental Justice Small Grant Recipients.

Fiscal Year 1997**Q. How Can I Receive Information on the Fiscal Year 1997 Environmental Justice Grants Program?**

If you wish to be placed on the mailing list to receive information on the 1997 Environmental Justice Small Grants Program, you must mail your request along with your name, organization, address, and phone number to: U.S. Environmental Protection Agency, Office of Environmental Justice Small Grants—FY 1997 (3103), 401 M Street SW., Washington, DC 20460.

For additional information, please contact the appropriate Regional EJ Coordinator or designee listed at the end of this notice.

Dated: November 27, 1995.
Clarice E. Gaylord,
Director, Office of Environmental Justice.
Contact names and addresses

Region 1

Primary Contact: Rhona Julien, USEPA Region 1, John F. Kennedy Federal Building, One Congress Street, 10th Floor OCR, Boston, MA 02203
Secondary Contact: Pat O'Leary

Region 2

Primary Contact: Melva Hayden, USEPA Region 2, 290 Broadway, 26th Floor, New York, NY 10007
Secondary Contacts: Natalie Loney, Lillian Johnson

Region 3

Primary Contact: Reginald Harris, USEPA Region 3 (3PM-71), 841 Chestnut Building, 3DA00, Philadelphia, PA 19107-4431
Secondary Contact: Mary Zielinski

Region 4

Primary Contact: Vivian Malone-Jones, USEPA Region 4, 345 Courtland Street, N.E., Atlanta, GA 30365
Secondary Contact: Hector Buitrago

Region 5

Primary Contact: Margaret Millard, USEPA Region 5 (H-75), 77 West Jackson Boulevard, Chicago, IL 60604-3507
Secondary Contact: Garnetta Clark

Region 6

Primary Contact: Shirley Augurson, USEPA Region 6 (6M-P), 1445 Ross Avenue, 12th Floor, Dallas, Texas 75202-2733
Secondary Contact: Hattie Brown

Region 7

Primary Contact: Hattie Thomas, USEPA Region 7, 726 Minnesota Avenue, Kansas City, KS 66101
Secondary Contact: Rupert Thomas

Region 8

Primary Contact: Elisabeth Evans, USEPA Region 8 (PM-AS), 999 18th Street, Suite 500, Denver, CO 80202-2405
Secondary Contact: Patricia Denham

Region 9

Primary Contact: Lori Lewis, USEPA Region 9 (E-1), 75 Hawthorne Street, San Francisco, CA 94105
Secondary Contact: Martha Vega

Region 10

Primary Contact: Joyce Kelly, USEPA Region 10(MD-142), 1200 Sixth Avenue, Seattle, WA 98101
Secondary Contact: Susan Morales

Headquarters

Primary Contact: Angela Chung, USEPA, Office of Environmental Justice (3103), 401 M Street SW., Washington, DC 20460.

States and Territories By Region

Region 1: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region 2: New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Region 3: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Region 4: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Region 5: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Region 6: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region 7: Iowa, Kansas, Missouri, Nebraska

Region 8: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Region 9: Arizona, California, Hawaii, Nevada, American Samoa, Guam

Region 10: Alaska, Idaho, Oregon, Washington.

[FR Doc. 95-29747 Filed 12-5-95; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5338-5]

**Office of Environmental Justice;
Environmental Justice Community/
University Partnership Grants Program
Request for Applications (RFA) for
Fiscal Year (FY) 1996**

Purpose of Notice

The purpose of this notice is to solicit applications from eligible candidates under the Environmental Justice Community/University Partnership Grants Program sponsored by the Environmental Protection Agency, Office of Environmental Justice.

Grants Program Overview

The grants program was established to help community groups and tribal governments effectively address local environmental justice issues through active partnerships with one or more institutions of higher education. The Universities/Colleges shall support affected environmental justice community groups and American Indian tribes who engage in or plan to carry out projects that address environmental justice issues. The Universities/Colleges must focus on the design, methods, and techniques to evaluate and solve the environmental justice issues of concern to affected communities. The Universities/Colleges that have experience working with, and capabilities to effectively communicate with, affected communities, in actual partnership with such communities, will be given priority. This grants program will further the federal government's commitment to develop stronger partnerships with stakeholders in order to enhance community-based environmental protection.

The emphasis of this grants program is on meaningful, two-way cooperation between communities or tribes and institutions of higher education serving minority communities and low-income communities or tribes in order to address environmental justice issues. Partnerships must be established with formal agreements (i.e. Memoranda of Agreements) between at least one College/University and at least one socio-economically disadvantaged community which is adversely impacted by an environmental hazard. These partnerships become the catalyst for increasing environmental awareness and involvement in resolving environmental problems, such as exposure to environmental pollutants in minority communities and low-income communities and on Tribal lands.

The main objective of this grants program is to link community residence/organizations and tribes with

their neighboring or affiliated academic institutions to forge partnerships to address local environmental and public health concerns. This effort is designed to ensure that these partners:

- Are aware of basic environmental regulations, laws, concepts, issues, and resources;
- Understand their role in identifying and defining problems, and monitoring contaminants related to environmental exposures;
- Are included in the dialogue that results in shaping future policies, guidances, and approaches to problem solving; and
- Are encouraged to be active partners in developing responses and setting priorities for intervention.

Through these partnerships, communities will be encouraged to become involved in accessing information from environmental databases, in cleaning-up and restoring environmental quality in communities that have environmental insults, and in surveying and monitoring environmental quality.

Number of Grants Proposed: A minimum of four grants are expected to be awarded for fiscal year (FY) 1996, depending on the amount of funding.

Grant Award Amount: A maximum of \$250,000 will be awarded to each recipient, contingent upon the availability of funds. Work funded by this program is expected to begin upon award of the grant. All grants under this notice are expected to be awarded by August 1996.

Grant Term: The grant award will be a maximum of \$250,000, but the project period can extend up to three years, if necessary. However, if the project period extends beyond one year the funding will be dispersed to the grantee over the course of the project period, not all in the first year.

Eligibility: Participation is limited to all institutions of higher education, which are eligible under applicable statutory authorities, including Historically Black Colleges or Universities (HBCUs), Hispanic Serving Institutions (HSIs), Tribal Colleges (TCs), and institutions serving Asian-American (AA's) and other minority communities or low-income communities, and which have formal partnerships (i.e., a signed Memorandum of Agreement) with any affected community groups (e.g., community-based/grassroots organizations, churches, schools, or other nonprofit community organizations) or with tribal governments.

The Environmental Justice Community/University Partnerships

may be either a partnership among two single entities or consortium of entities. If a consortium is proposed, the lead academic institution must be identified and be one of the eligible applicants. This lead institution is recognized as the grantee and as such is responsible for all activities under the agreement.

Statutory authorities: The granting authority is multi-media and the grant proposal must address at least two of the following statutes:

Clean Water Act, Section 104(b)(3)
Solid Waste Disposal Act, Section 8001(a)

Clean Air Act, Section 103(b)(3)
Marine Protection, Research and Sanctuaries Act, Section 203

Toxic Substances Control Act, Section 10(a)¹

Safe Drinking Water Act, Section 1442(b)(3)

Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(a)²

Comprehensive Environmental Response, Compensation and Liability Act,
Section 111(c)(10).³

Background: In its 1992 report, *Environmental Equity: Reducing Risk for All Communities*, EPA found that minority and low-income communities may experience higher than average exposure to toxic pollutants than the general population. The Office of Environmental Justice (OEJ) was established in 1992 to help these communities identify and assess pollution sources, implement environmental awareness and training programs for affected residents and work with local stakeholders (community-based organizations, academia, industry, local governments) to devise strategies for environmental improvements.

In June of 1993, OEJ was delegated granting authority to solicit projects, select suitable projects from among those proposed, supervise such projects, evaluate the results of projects, and disseminate information on the effectiveness of the projects, and feasibility of the practices, methods, techniques and processes in environmental justice areas.

General: The following questions and answers are designed to respond to frequent concerns of applicants.

¹ Projects under this statute are limited to research or development activities.

² Projects under this statute are limited to research activities (e.g., surveys)

³ Projects under this statute are limited to hazardous substance detection, assessment, and evaluation, and associated human health effects and risks.

A. What Specific Requirements Exist for the Environmental Justice Community/University Partnership Grants Program?

Projects under the Environmental Justice Community/University Partnership Grants Program shall include, but not be limited to:

1. Design and demonstration of field methods, practices, and techniques, including assessment and analysis of environmental justice conditions and problems which may have a wide applicability and/or addresses a high priority environmental justice issue (e.g., socio-economic impact studies);

2. Research projects to understand, assess or address, regional and local trends in environmental justice issues or problems (e.g., monitoring of socio-economic change in a community as a result of an environmental abuse);

3. Demonstration or dissemination of environmental justice information, including development of educational tools and materials (e.g., establish an environmental justice clearinghouse of successful environmental justice projects and activities or teach about risk reduction, pollution prevention, or ecosystem protection as potential strategies for addressing environmental justice problems or issues);

4. Determine the necessary improvements in communication and coordination among local, state and tribal environmental programs and facilitate communication, information exchange, and community partnerships among all stakeholders to enhance critical thinking, problem solving, and decision making;

5. Provide technical expert consultation and training for accessing, analyzing, and interpreting public environmental data, and utilization of electronic communications technology (e.g., TRI, GIS, Internet and E-mail); and

6. Provide for a minimal "hard science" analysis capability (e.g., analyze water and soil samples to test for basic pollutants, provide radon testing kits, etc.).

Projects should involve new and innovative approaches and/or significant new combinations of resources, both of which should be identified in the partnership agreements;

An applicant is required to include in the application a signed agreement which describes the role of the prospective partner(s) in the project and its implementation, and which includes a commitment or intent to commit resources from the prospective partner(s) contingent only upon receipt of the grant award. The college/university must identify the community

residents or tribal government representatives who will serve on the "partnership team." Where appropriate, the community or tribal representatives on the team may be compensated for their work; and

Applications should include partnerships between colleges and universities which are providers of training and programs for these communities. One of the goals of the partnerships should be to develop a plan to shift the focus of these organizations from maintenance to that of self-sufficiency.

B. What does Environmental Justice Involve Under the Environmental Justice Community/University Partnership Grant?

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no groups of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

C. May an Individual Apply?

No. Only institutions of higher education may apply. The professional qualifications or community-based experience of those individuals participating in the proposed project will be an important factor in the selection process.

Funding Priorities

D. What Types of Proposed Environmental Justice Community/University Partnerships Will Have the Best Chance of Being Funded?

The Environmental Justice Community/University Partnerships must meet the objectives and criteria as described in Section A and B. The evaluations will be conducted, and items weighed, as indicated in Section G.

E. Are Matching Funds Required?

Yes. Federal funds for the Environmental Justice Community/University Partnerships shall not exceed 95% of the total cost of the project. EPA encourages non-Federal matching shares of greater than 5%. The non-Federal share of costs may be provided in cash or by in-kind contributions of services or property. In-kind contributions often

include salaries or other verifiable costs. In the case of salaries, applicants may use either minimum wage or fair market value of similar work in the same labor market. The proposed match, including the value of in-kind contributions, is subject to negotiation with EPA. All grants are subject to audit, so the value of in-kind contributions *must be carefully documented*. The matching (non-Federal) share is a percentage of the entire cost of the project. For example, if the total project cost is approximately \$260,000 then the Federal portion can be no more than \$247,000, which is 95% of the total project cost. For this example, the grant recipient would be required to provide \$13,000 for the project. The amount of non-Federal funds, including in-kind contributions, must be briefly itemized in Block 15 of the application form (SF 424). Among other things, *EPA funds cannot be used for matching funds for other Federal grants, construction, buying furniture, lobbying, intervention in federal rule-making, adjudicatory proceedings, litigation, or personal gifts*. Refer to 40 CFR 30.410 entitled, "How does EPA determine allowable costs?"

Application Procedure

An "Application for Federal Assistance" form (Standard Form 424 or SF 424), a "Budget Information: Non-Construction Programs" form (SF 424A), a Work Plan (described below), and a Memorandum of Agreement must be submitted. These documents contain all the information EPA needs to evaluate the merits of your proposed grant proposal.

Each instrument approved under the environmental justice delegation must be consistent with the Federal Grant and Cooperative Agreements Act of 1977, Public Law 95-224, as amended, 31 U.S.C. Section 6301; Title 40 of the Code of Federal Regulations, Parts 30 and 33, and existing media-specific regulations pertinent to the statement of work.

F. How Must the Application be Submitted and Specifically what Must it Include?

The applicants must submit one original, signed by a person authorized to receive funds for the applicant, and two copies of the application (double-sided copies encouraged). Applications must be reproducible (for example; stapled once in the upper left hand corner, on white paper, and with page numbers).

For the purposes of this grants program, an application must contain an SF 424, SF 424A, a work plan, a Memorandum of Agreement (MOA), and

the Certification Forms. The following describes these items:

1. Application for Federal Assistance (SF 424). An SF 424 is an official form required for all Federal grants. A completed SF 424 must be submitted as part of your preapplication.

2. Budget Information: Non-Construction Programs (SF 424A). An SF 424A is an official form required for all Federal grants. A completed SF 424A must be submitted as part of your application. This form, along with instructions are included at the end of this notice. In addition, a detailed budget which breaks down the budget categories is required.

3. Work Plan. A work plan describes the applicant's proposed project. Work plans must be no more than 15 pages total. One page is one side of a single spaced typed page. The pages must be letter size (8½ x 11), with normal type size (19 or 12 cpi) and at least 1" margins. The only appendices and letters of support that EPA will accept are a budget, resumes of key personnel, and commitment letters.

4. Memorandum of Agreement. The Memorandum of Agreement will provide the foundation for the working relationship between the college/university and the partners involved in the project. This agreement must be signed and have the roles and responsibilities of each partner clearly defined.

5. Necessary Signed Forms. Procurement Systems Certification, Certification Regarding Debarment, Suspension and Other Responsibility Matters, Certification Regarding Lobbying.

G. How will the Applications be Evaluated?

The applications will be evaluated by a review panel and selected according to the following criteria. The percentages next to the items are the weights EPA will use to evaluate the applications. Please note that certain sections are given greater weight than others.

(a.) A concise introduction of no more than three pages that states the nature of the college/university, how the college/university has been successful in the past, proposed uses, objectives, methods, plans, target audiences, and expected results of the project. (10%)

(b.) Clear and concise description of the project which includes the following:

1. A section describing the field methods, practices, and techniques, including assessment and analysis, which the partnership expects to implement to address national, regional

and local environmental justice issues. (10%)

2. A section describing how the partnership will disseminate environmental justice information and provide training, including educational tools and materials. (10%)

3. A section describing how the partnership will improve communications and coordination among local, state, tribal and federal environmental programs and community organizations, and how the partnership will enhance critical thinking, problem solving and decision making among all stakeholders. Specify effective and realistic methods for involving members of the targeted population. (10%)

4. A section describing who or how the partnership will obtain expert consultation and provide training for the partners to access, analyze and interpret public environmental data and utilize electronic communications technology. (10%)

5. A section describing the "hard science" analysis capability of the college(s)/university(ies). (10%)

(c.) A conclusion discussing how the applicant will evaluate the success of the partnership, in terms of the anticipated strengths and challenges in developing and administering the partnership. (10%)

(d.) An appendix with a budget describing how funds will be used in terms of personnel, fringe benefits, travel, equipment, supplies, contract costs, and other. Funds can not be used for matching funds for other federal grants, construction, buying furniture, lobbying, intervention in federal rule-making, adjudicatory proceedings, litigation, or personal gifts. The budget must list proposed milestones with deadlines and estimated cost and completion dates. All costs must be consistent with the cost principles of the Office of Management and Budget (OMB), A-21. (10%)

(e.) An appendix with one or two page resumes of up to five key personnel. (5%)

(f.) An appendix with one page letters of commitment from community-based organizations with a significant role in the development and administration of the partnership. Letters of endorsement will not be considered. (5%)

(g.) A Memorandum of Agreement signed by each representative of the partnership team which identifies the roles and responsibilities of each partner. (10%)

H. When and Where Must the Applications be Submitted?

An original plus two copies of the application must be mailed to EPA postmarked no later than Saturday, March 2, 1996. Applications must be submitted to this EPA headquarters address: United States Environmental Protection Agency, Office of Environmental Justice, Mail Code 3103 Environmental Justice Community/ University Partnership Grants, 401 M Street S.W., Washington, D.C. 20460.

Review and Selection Process

I. How Will Applications be Reviewed?

EPA's Office of Environmental Justice will form a selections committee comprised of EPA, other federal agency staff, and outside reviewers to evaluate proposals and recommend selections. Applications will be screened to ensure they meet all the requirements described in this Sections A-H. Reviewers will specifically evaluate the degree to which the applications meet EPA's objectives and criteria as discussed in Section G. Applications will be disqualified if they are incomplete or do not meet EPA's basic criteria.

J. How Will the Final Selections be Made?

After the applications are reviewed and ranked as described in Section G, EPA officials will compare the best applications and make final selections. Factors EPA will take into account include; geographic and socio-economic balance, diverse nature of the projects, and if the partnership's benefits can be sustained after the grant is completed.

K. How Will Applicants be Notified?

After all applications are received, EPA will mail acknowledgements to each applicant. Once applications have been recommended for funding, EPA will notify those applicants selected and request any additional information necessary to complete the award process. The EPA Office of Environmental Justice will notify those applicants whose grant applications were not selected for funding.

Post-Award

L. When Should the Proposed Partnership Begin Functioning?

Partnerships cannot operate or begin development on this specific project before funds are awarded. Start dates are currently targeted for August 1, 1996. It is EPA's intent to fund each partnership only once. Future funding is dependent upon congressional appropriations.

M. How Much Time do Grant Recipients Have to Complete the work Proposed?

Activities must be completed within the time frame specified in the grant award, usually one or two years from award date. Grant project periods may be approved for up to two years.

N. Who Will Develop and Manage the Partnerships?

Grant recipients are responsible for the successful development and management of all projects. All applications must identify a project manager. The recipient's project manager is subject to approval by the EPA project officer, but EPA may not direct that any particular person be the project officer. The lead institution (applicant) is recognized as the grantee and as such is responsible for all activities under the agreement.

O. What Reports Must Grant Recipients Complete?

Recipients of grants will be expected to report on quarterly progress, as well as final project completion. All recipients must submit final reports for EPA approval prior to the expiration of the project period. Specific reporting requirements will be detailed in the award agreement. EPA plans to collect, evaluate, and as appropriate, disseminate grantees' final reports to serve as model programs. Since networking is crucial to the success of the program, grantees may be asked to transmit an extra copy to a central collection point.

P. What is the Expected Time frame for the Review and Awarding of the Grants?

December 1, 1995

Request for Applications Published in the Federal Register

December 1, 1995–March 2, 1996

Eligible grant recipients develop their proposals

March 2, 1996

Proposals must be postmarked or received by EPA by this date

March 2, 1996–May 1, 1996

Federal Agency Officials and review panel evaluate and recommend award selection

May 1, 1996–June 30, 1996

EPA Grants Administration Division processes grants. Applicants will be contacted by the grants office if their proposals were selected for funding. Additional information may be required from the selectees.

August 1, 1996

EPA anticipates the awarding of the grants and the beginning of the partnership projects/activities.

Fiscal Year 1997 Grants

To Receive Information on the Fiscal Year (FY) 1997 Environmental Justice Community/University Partnership (CUP) Grants Program and future year grants, please mail or fax your request along with your name, organization, address, and phone number to the Office of Environmental Justice (OEJ), FY 1997 CUP Grants. OEJ's address is provided in Section H. OEJ's fax number is (202) 260-0852. You may also obtain this information by calling OEJ's 24 hour hotline number 1-800-962-6215

Available Translations

A Spanish translation of this announcement is available upon request. Please call the Office of Environmental Justice at 1-800-962-6215 for a copy.

Hay traducciones disponibles en español. Si usted está interesado en obtener una traducción de este anuncio en español, por favor llame a la Oficina de Justicia Ambiental conocida como "Office of Environmental Justice", línea de emergencia (1-800-962-6215).

Working Definitions

Tribes—all federally recognized American Indian tribes (including "Alaskan Native Villages"), pueblos, and rancherios. Although the term "tribe," as defined in this notice, refers to only "federally recognized tribes," state recognized tribes or indigenous peoples organizations are able to apply for grant assistance as "other eligible grass-roots organizations" as long as they meet the definition of an incorporated, nonprofit organization.

Nonprofit—means any corporation, trust, association, cooperative, or other organization which (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations.

November 27, 1995.

Clarice E. Gaylord,

Director, Office of Environmental Justice.

[FR Doc. 95-29744 Filed 12-05-95; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5340-3]**State of New Jersey; Final Partial Program Determination of Adequacy of State/Tribe Municipal Solid Waste Landfill Permit Program**

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Partial Program Determination of Adequacy on New Jersey's Application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that Municipal Solid Waste Landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule governing such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency has approved and will continue to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owner/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The State of New Jersey applied for a partial program determination of adequacy under Section 4005 of RCRA. EPA reviewed New Jersey's application and made a tentative determination of adequacy for those portions of the MSWLF permit program that are adequate to ensure compliance with the revised MSWLF Criteria. After reviewing all comments received, EPA today is granting final partial approval to New Jersey's program.

EFFECTIVE DATE: The partial program determination of adequacy for New Jersey shall be effective on December 6, 1995.

FOR FURTHER INFORMATION CONTACT: Lorraine Graves, U.S. EPA Region II, Mail code 2AWM, 22nd Floor, 290 Broadway, New York, New York, 10007-1866, telephone: (212) 637-4099.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under Part 258. Subtitle D also requires in Section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in STIR to allow partial approval if: 1) the Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with Part 258; 2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and, 3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of Part 258. As provided in the October 9, 1991, municipal landfill rule, EPA's national Subtitle D standards took effect in October, 1993. Consequently, any portions of the Federal Criteria which are not included in an approved State/Tribal program by October, 1993, would apply directly to the owner/operator. The requirements of the STIR, if promulgated, will ensure that any mixture of State/Tribal and Federal rules that take effect will be fully workable and leave no significant gaps in environmental protection. These practical concerns apply to individual partial approvals granted prior to the promulgation of the STIR rule. Consequently, EPA reviewed the program approved today and concluded that the New Jersey permit program and the Federal requirements mesh reasonably well and leave no significant gaps. Partial approval will allow the

Agency to approve those provisions of the New Jersey permit program that meet the requirements and provide the State time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the New Jersey permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

EPA has reviewed New Jersey's requirements to determine whether they are "adequate" under section 4005(c)(1)(C) of RCRA. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in Section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program. EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submissions of a schedule mandatory in STIR.

On March 3, 1994, the State of New Jersey submitted an application to obtain a partial program adequacy determination for its municipal solid waste landfill permit program. Additional material was submitted on July 21, 1994 and September 6, 1994. On October 28, 1994, EPA published a tentative partial determination of adequacy for New Jersey's program. Further background on the tentative partial program determination of

adequacy appears at 59 FR 54190, October 28, 1994.

Along with the tentative determination, EPA announced the availability of the application for public comment. The New Jersey application for partial program adequacy determination was available for public review and comment at the New Jersey Department of Environmental Protection in Trenton, New Jersey and at the EPA Region II Library in New York, New York. The public comment period commenced on October 28, 1994 and ended on December 14, 1994.

Although RCRA does not require EPA to hold a hearing on any determination to approve a State/Tribe's MSWLF program, the Region scheduled a public hearing on this tentative partial determination. A public hearing was held in Trenton, New Jersey on December 14, 1994. A summary of the comments received, and EPA's responses thereto is contained in the public comment section of this notice.

On March 3, 1994, the State of New Jersey submitted an application for partial determination of adequacy of its solid waste landfill permit program. Certain revisions and amendments were submitted on July 21, 1994 and September 6, 1994. The application addressed all components of 40 CFR Part 258 and discussed New Jersey's enforcement authority, provisions for citizen participation, and the current status of solid waste landfills within the State. EPA reviewed New Jersey's application and tentatively determined that the State's program met the requirements necessary to qualify for a determination of partial program approval of adequacy to ensure compliance with the Federal Criteria with the exception of Subpart E—Ground-Water Monitoring and Corrective Action. Upon appropriate adoption of revisions to its existing ground-water regulations, it is expected that New Jersey will become eligible for full approval, which will include Subpart E—Ground-Water Monitoring and Corrective Action. New Jersey has provided a revised schedule for adoption of proposed regulatory revisions. The revised regulations are expected to be fully effective by late 1996, rather than by the end of 1995 as set forth in the original schedule. EPA has reviewed the revised schedule and concluded that it is reasonable. In addition, all of the New Jersey solid waste regulations are scheduled to be re-adopted during the 1995-1996 period to comply with the Governor's Executive Order #66 requiring periodic re-adoption of administrative rules.

B. Public Comment

A summary of the public comments received on the tentative determination of partial program adequacy and EPA's responses follows. Two comments were received by mail. The first involved questions and concerns of a site-specific nature in several New Jersey counties. Since the questions and concerns raised were specific to either particular facilities or working operations and were not relevant to the State's program as to its equivalency to the federal criteria or overall program adequacy, these questions were not considered in this determination and will not be discussed in this notice. However, concerns were addressed by direct correspondence with the commentor.

The second comment challenged New Jersey's wetlands protection standards. The comment asserted that New Jersey's wetland standards were not "technically comparable" to the Federal Criteria and that the State application "failed to cite regulations" that adequately protect wetlands. It also asserted that New Jersey regulations lack a counterpart to 40 CFR § 258.12(a)(1), which provides significant restrictions on locating solid waste landfill units in wetlands. In addition, the commentor remarked that New Jersey had permitted a particular county landfill expansion in violation of the Federal landfill criteria.

The New Jersey application identified and discussed its wetlands regulations as they appear in N.J.A.C. 7:26, the solid waste requirements, as well as N.J.A.C. 7:7A, the Freshwater Wetlands Protection Act Rules. The narrative portion of the New Jersey application clearly states that the New Jersey Department of Solid Waste Management shall issue a freshwater wetlands or open water fill permit only if it finds that there is no practicable alternative to the proposed activity. The rules apply to sanitary landfills proposing to engage in regulated activities set forth in N.J.A.C. 7:7A. Subsequent to the public hearing, New Jersey again addressed this issue in correspondence with EPA and reaffirmed that New Jersey regulations are consistent with the federal approach.

As to the matter of the particular county landfill expansion, it is EPA's understanding that the owner/operator of the facility in question has not received a permit to proceed with these activities. Furthermore, EPA's responsibility in this matter is only directed to a determination concerning the adequacy of the State permit program.

C. Decision

After reviewing the public comments, I conclude that New Jersey's application for a partial program adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, New Jersey is granted a partial program determination of adequacy for the following areas of its municipal solid waste permit program: location restrictions, operating criteria, design criteria, closure and post-closure care, and financial assurance criteria.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the relevant portions of the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the Federal Register. All of the requirements and obligations in the State's program are already in effect as a matter of State law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: November 7, 1995.
William J. Muszynski,
Deputy Regional Administrator.
[FR Doc. 95-29740 Filed 12-5-95; 8:45 am]
BILLING CODE 6560-50-P

[OPP-42075; FRL-4968-7]

Oregon Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve Amendment to Oregon Certification Plan.

SUMMARY: On March 30, 1976, EPA announced approval of the Oregon plan for the certification of applicators of restricted use pesticides. Oregon has submitted an amendment to this certification plan to permit certification of applicators of 1080 Livestock Protection Collars (LPC). Notice is hereby given of the intention of EPA to grant approval of this amendment. **DATES:** Written comments should be submitted on or before January 22, 1996. **ADDRESSES:** Send written comments, identified by docket control number "OPP-42075" to Allan Welch, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Eighth Floor, Seattle, WA 98101.

The comments received pursuant to this notice will be available at the aforementioned location from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: welch.allan@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP-42075." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under the SUPPLEMENTARY INFORMATION unit of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with

procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Copies of the Oregon plan amendment are available for viewing at the following locations during normal business hours:

1. U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Eighth Floor, Seattle, WA 98101. Contact: Allan Welch, (206) 553-1980, e-mail: welch.allan@epamail.epa.gov.

2. U.S. Environmental Protection Agency, Office of Pesticide Programs, Crystal Mall #2, 1921 Jefferson Davis Highway, Rm. 1121, Arlington, VA 22202. Contact: John MacDonald, (703) 305-7370.

3. Oregon Department of Agriculture, Plant Division, 635 Capitol Street N.E., Salem, OR 97310. Contact: Christopher Kirby, (503) 986-4635.

FOR FURTHER INFORMATION CONTACT: Allan Welch, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Eighth Floor, Seattle, WA 98101, Telephone (206) 553-1980, e-mail: welch.allan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The final decision permitting registration of 1080 LPC was signed by Lee M. Thomas, Assistant Administrator for Solid Waste and Emergency Response, on October 31, 1983 (FIFRA Docket 502). This final decision requires applicators of 1080 LPC to receive specific training and to comply with recordkeeping and reporting requirements beyond that of applicators of other restricted use pesticides. For these reasons EPA has required a distinct certification process for applicators of 1080 LPC. To meet the requirement Oregon has submitted an amendment to the existing Oregon certification plan. This amendment will establish a 1080 LPC subcategory under their existing regulatory pest control category.

Oregon will only be certifying employees of the U.S. Department of Agriculture, Animal Damage Control (ADC), as 1080 LPC applicators. Certification granted ADC employees will permit them to utilize 1080 LPC in performance of their official duties. ADC estimates that approximately 34 employees of ADC will seek certification under the 1080 LPC subcategory. The only registrant of 1080 LPC in Oregon is the ADC. Therefore, the ADC will be the source of 1080 LPC.

The proposed amendment to the Oregon certification plan contains a draft Memorandum of Agreement

between the Oregon Department of Agriculture (ODA) and the ADC addressing their respective roles and responsibilities. The ODA will oversee the activities of the ADC in its roles both as registrant and as employer/supervisor of 1080 LPC applicators. In addition to its responsibilities as registrant, the ADC will provide training and supervision to its 1080 LPC applicators. Certification and recertification will be based upon a written examination administered by the ODA. Recertification will be required every 5 years.

EPA finds that the proposed amendment permitting certification of 1080 LPC applicators meets the criteria specified in the Final Decision of October 31, 1983 and will assure safe and effective use of 1080 LPC. Therefore, EPA announces its intention to approve the amendment to the Oregon certification plan permitting certification of 1080 LPC applicators.

Interested persons are invited to submit written comments on EPA's intention to approve this amendment to the Oregon certification plan. A record has been established for this action under docket number "OPP-42075" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Eighth Floor, Seattle, WA.

Electronic comments can be sent directly to EPA at:

welch.allan@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Dated: October 24, 1995.

Charles Clarke,

Regional Administrator, Region 10.

[FR Doc. 95-29455 Filed 12-5-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30398; FRL-4987-9]

Safety Pet Products, Inc.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by January 5, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP-30398] and the file symbol (069170-R) to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-30398]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential

may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Anne Ball, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308-8717; e-mail: ball.anne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from Safety Pet Products, Inc., 4901 W. Leigh St., Richmond, VA 23230, to register the pesticide product Nature Bath (EPA File Symbol 069170-R), containing the active ingredient sodium chloride at 95 percent, which involves a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. This product is for general use to include in its presently registered use, a new use to kill fleas and ticks. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP-30398] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov
Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703-305-5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: November 8, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95-29737 Filed 12-5-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180984; FRL 4988-3]

Cymoxanil, Propamocarb Hydrochloride and Dimethomorph; Receipt of Applications for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use the pesticides cymoxanil (CAS 57966-95-7), propamocarb hydrochloride (CAS 25606-41-1) and dimethomorph (CAS 110488-70-5) to treat potentially up to 50,000 acres of tomatoes to control immigrant strains of late blight which are resistant to historically used control materials. The Applicant proposes the

use of either new (unregistered) chemicals or the first food use of an active ingredient therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before December 20, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180984," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-180984]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain (CBI) must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway,

Arlington, VA, (703) 308-8326; e-mail: pembedton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue specific exemptions for the use of cymoxanil, propamocarb hydrochloride, and/or dimethomorph on tomatoes to control late blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Recent failures to control late blight in tomatoes as well as potatoes with the registered fungicides, have been caused almost exclusively by immigrant strains of late blight *Phytophthora infestans*, which are resistant to the control of choice, metalaxyl. Before the immigrant strains of late blight arrived, all of the strains in the U.S. were previously controlled by treatment with metalaxyl. The Applicant states that presently, there are no fungicides registered in the U.S. that will provide adequate control of the immigrant strains of late blight. The Applicant states that each of these requested chemicals has been shown to be effective against these strains of late blight. Each active ingredient holds current registrations throughout many European countries for control of this disease. The Applicant indicates that at least a 30 percent yield reduction is expected based on the current infestation. Net revenues are expected to be reduced by over \$12 million for the affected acreage without the use of these requested chemicals.

The Applicant proposes to apply propamocarb hydrochloride, manufactured by AgrEvo USA Company, as Tattoo C, at a maximum rate of 0.9 lbs. active ingredient (2.3 pt of product) per acre by ground or air, with a maximum of 5 applications per season. A 7-day PHI will be observed. Use under this exemption could potentially amount to a maximum 225,000 lb. of propamocarb hydrochloride.

The Applicant proposes to apply cymoxanil, manufactured by E.I. du Pont de Nemours and Company, as Curzate M-8, and as Manex C-8, manufactured by Griffin Corporation, at a maximum rate of 0.1 lbs. active ingredient (1.25 lb. of product) per acre, by ground or air, with a maximum of 7 applications per season and a 5-day PHI. Use under this exemption could

potentially amount to a maximum 40,000 lb. of cymoxanil.

The Applicant proposes to apply dimethomorph at a maximum rate of 0.2 lbs. active ingredient (2.25 lb. of product) per acre, by ground or air, with a maximum of 5 applications per season and a 5-day PHI. Use under this exemption could potentially amount to a maximum 50,000 lbs of dimethomorph.

This notice does not constitute a decision by EPA on the applications. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) or the first food use of an active ingredient. Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

A record has been established for this notice under docket number [OPP-180984] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the

emergency exemptions requested by the Florida Department of Agriculture and Consumer services.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: November 8, 1995.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95-29253 Filed 12-5-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180983; FRL 4988-1]

Propazine; Receipt of Applications for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Texas Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide propazine (CAS 139-40-2) to treat up to 1,823,000 acres of sorghum to control pigweed. The Applicant proposes the use of a new (unregistered) chemical; additionally, an emergency exemption for this use has been requested for the previous 3 years, and a complete application for registration of this use and a tolerance petition has not been submitted to the Agency. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before December 21, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180983," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form

must be identified by the docket number [OPP-180983]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain (CBI) must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308-8791; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of propazine on sorghum to control pigweed. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Sorghum is grown as a rotational crop with cotton and wheat, in order to comply with the soil conservation requirements. Propazine, which was formerly registered for use on sorghum, was voluntarily canceled by the former Registrant, who did not wish to support its re-registration. The Applicants claim that this has left sorghum growers in most of Texas with no pre-emergent herbicides that will adequately control certain broadleaf weeds, especially pigweed. Until 1993, the year an exemption was first requested, growers were using existing stocks of propazine.

The Applicant states that other available herbicides have serious limitations on their use, making them unsuitable for control of pigweed in sorghum. Although the original Registrant of propazine has decided not to support this chemical through re-registration, another company has committed to support the data requirements for this use. Propazine was once registered for this use, but has now been voluntarily canceled and is therefore considered to be a new chemical.

The Applicant states that, since growers used existing stocks of propazine between the time of its voluntary cancellation and the availability of propazine under an emergency exemption, yields have not shown a decrease. However, the Applicant claims that significant economic losses will occur without the availability of propazine.

The Applicant proposes to apply propazine at a maximum rate of [1.2 lbs. active ingredient (a.i.)] (2.4 pts. of product) per acre, by ground or air, with a maximum of one application per crop growing season, on up to 1,823,000 acres of grain sorghum. Therefore, use under this exemption could potentially amount to a maximum total of 2,187,600 lbs. of active ingredient (546,900 gal. of product) in Texas. This is the fourth time that Texas has applied for this use of propazine on sorghum under section 18 of FIFRA. Texas was issued exemptions for this use for the past three growing seasons.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide), or if an emergency exemption for a use has been requested in any 3 previous years, and a complete application for registration of the use and/or a tolerance petition has not been submitted to the Agency. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP-180983] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division

(7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Texas Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: November 6, 1995.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95-29252 Filed 12-5-95; 8:45 am]

BILLING CODE 6560-50-F

[FRL-5340-9]

Notice of Proposed Administrative Cost Recovery Agreement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the Slattery Gas Stove Site, Brooklyn, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative agreement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(i), the U.S. Environmental Protection Agency ("EPA") Region II

announces a proposed administrative settlement pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1), relating to the Slattery Gas Stove Site ("Site") in Brooklyn, Kings County, New York. This Site is not on the National Priorities List established pursuant to Section 105(a) of CERCLA. This notice is being published to inform the public of the proposed settlement and of the opportunity to comment.

The settlement, memorialized in an Administrative Cost Recovery Agreement ("Agreement"), is being entered into by EPA and Datsun Realty Corp.; J.B. Slattery & Bros., Inc.; Abraham Leser; and Solomon Obstfeld (collectively, the "Respondents"). Under the Agreement, the Respondents shall pay EPA the sum of \$95,000.00, in partial reimbursement of EPA's claim for response costs incurred with respect to the Site on or prior to November 3, 1994.

DATES: EPA will accept written comments relating to the proposed settlement on or before January 5, 1996.

ADDRESSES: Comments should be sent to: Eric Schaaf, Chief, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, N.Y. 10007-1866. Comments should reference the Slattery Gas Stove Site and EPA Index No. II-CERCLA-95-0208. For a copy of the Agreement, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Juan M. Fajardo, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York, 10007-1866, telephone: (212) 637-3179.

Dated: October 30, 1995.
William Muszynski,
Acting Regional Administrator.
[FR Doc. 95-29741 Filed 12-5-95; 8:45 am]
BILLING CODE 6560-50-P

[FRL-5340-5]

Superfund Program; Final Model CERCLA Past Costs Consent Decree and Administrative Agreement

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Agency is publishing today the final "Model CERCLA Section 107 Consent Decree for Recovery of Past Response Costs" and the final "Model CERCLA Section 122(h)(1) Agreement

for Recovery of Past Response Costs." These models, developed by the Agency and the U.S. Department of Justice, provide guidance for Agency and Department staff when negotiating settlement of CERCLA Section 107 claims for recovery of purely past response costs. The model consent decree is designed for judicially-approved CERCLA Section 107 settlements, and the model agreement is designed for administrative CERCLA Section 122(h)(1) settlements. The Agency is publishing the models in their entirety, along with the September 29, 1995 joint memorandum of the EPA and the U.S. Department of Justice announcing their issuance, to inform affected members of the public of their existence and content.

FOR FURTHER INFORMATION CONTACT: Janice C. Linett, Mail Code 2272, Office of Enforcement and Compliance Assurance, Regional Enforcement Division, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 260-7116.

Dated: October 26, 1995.

Susan Brown,
Acting Director, Office of Site Remediation Enforcement.

Memorandum

Subject: Issuance of "Model CERCLA Section 107 Consent Decree for Recovery of Past Response Costs" and "Model CERCLA Section 122(h)(1) Agreement for Recovery of Past Response Costs"

From: Jerry Clifford, Director, Office of Site Remediation Enforcement, U.S. Environmental Protection Agency
Bruce S. Gelber, Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice

To: Regional Counsel, Regions I-X
Regional Waste Management Division Directors, Regions I-X
Financial Management Officers, Regions I-X
Assistant Chiefs, Environmental Enforcement Section

September 29, 1995.

We are pleased to issue the final versions of two model CERCLA cost recovery settlement documents: 1) "Model CERCLA Section 107 Consent Decree for Recovery of Past Response Costs" ("Model CD"); and 2) "Model CERCLA Section 122(h)(1) Agreement for Recovery of Past Response Costs"

("Model Agreement"). The Model CD is to be used as guidance for EPA and DOJ staff when negotiating CERCLA Section 107 judicial consent decrees for recovery of past response costs. The Model Agreement is to be used as guidance for EPA and DOJ staff when negotiating CERCLA Section 122(h) administrative agreements for recovery of past response costs. Both models are designed for resolution of purely past cost claims and are not intended to be used to resolve claims for future work or payment of future response costs ("cashout" settlements). Cashout settlement terms will be provided in subsequent models.

We encourage our staffs to adhere as closely as possible to the terms of these models, subject to modifications needed to reflect site-specific circumstances. We believe use of these models will reduce negotiation timeframes, achieve nationally consistent settlements, promote compliance with current settlement practices and procedures, and increase the speed of management review and approval. When seeking approval of any settlement based upon one of these models, staff should identify any significant deviation from the relevant model and the basis for the departure. For DOJ staff, these models are available electronically on the Section's work product directory, EESINDEX, as N:/NET/SS52/UDD/EESINDEX/CERMODEL/PASTCOST.CD or PASTCOST.AOC.

We would like to thank all EPA and DOJ staff who assisted in the development of these models. If you have any questions about these models, please contact Janice Linett of the Regional Support Division at (703) 978-3057 or Tom Mariani of the Environmental Enforcement Section at (202) 514-4620.

Attachments

cc: Lawrence E. Starfield, Acting Associate General Counsel, Solid Waste and Emergency Response Division,
Stephen D. Luftig, Director, Office of Emergency and Remedial Response
Jack L. Shipley, Director, Financial Management Division
Letitia Grishaw, Chief, Environmental Defense Section

Environmental Protection Agency and Department of Justice Model Cercla Section 107 Consent Decree for Recovery of Past Response Costs

This model and any internal procedures adopted for its implementation and use are intended as guidance for employees of the U.S. Department of Justice and the U.S.

Environmental Protection Agency. They do not constitute rulemaking by the Department or Agency and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The Department or Agency may take action at variance with this model or its internal implementing procedures.

Model Cercla Section 107 Consent Decree for Recovery of Past Response Costs

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In the United States District Court for the District of [_____] [_____] Division ¹

Consent Decree

United States of America, [and the State of _____] Plaintiff[s], v. [Defendants] Defendants.

Civil Action No. _____
Judge _____

[Note: If the complaint includes causes of action which are not resolved by this consent decree, or names defendants who are not signatories to this consent decree, the title should be "Partial Consent Decree".]

I. Background

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the [insert Site Name] in [insert City, County, State] ("the Site").

¹ Follow local rules for caption format.

[[_____] The State of _____ (the "State") also filed a complaint against the defendants in this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and [list State laws cited in the State's complaint]. The State in its complaint seeks [insert relief sought].]

B. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to Plaintiff[s] arising out of the transactions or occurrences alleged in the complaint[s].²

C. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

Therefore, with the consent of the Parties to this Decree, it is Ordered, Adjudged, and Decreed:

II. Jurisdiction

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. Parties Bound

2. This Consent Decree is binding upon the United States [and the State], and upon Settling Defendants and their [heirs,] successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. Definitions

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree

² In situations where the court has entered summary judgment as to liability, we normally should preserve that result in a subsequent settlement by deleting this Paragraph B and replacing it with one that describes the summary judgment decision.

or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).³

[[_____. "Owner Settling Defendants" shall mean [insert names].]]⁴

h. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States, the State of _____, and the Settling Defendants.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through [insert date], plus accrued Interest on all such costs through such date.⁵

³ The Superfund currently is invested in 52-week MK bills. The interest rate for these MK bills changes on October 1 of each year. To obtain the current rate, contact Vince Velez, Office of Administration and Resource Management, Financial Management Division, Superfund Accounting Branch, at (202) 260-6465.

⁴ This definition is needed if the optional paragraph on Notice of Obligations to Successors-in-Title is used. See *infra* p. 14.

⁵ If the past costs settlement is partial, it may be necessary to continue the definition with a brief description of the past response action(s) which are

[[____. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the [Site or ____ operable Unit at the Site] signed on [insert date] by the Regional Administrator, EPA Region ____, or his/her delegatee, and all attachments thereto.]]

k. "Plaintiff[s]" shall mean the United States [and the State].

l. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

m. "Settling Defendants" shall mean [insert names of settling parties, or only if very numerous, "those parties identified in Appendix A."]

n. "Site" shall mean the _____ Superfund site, encompassing approximately ____ acres, located at [insert address or description of location] in [insert City, County, State], and [insert either "depicted more clearly on the map included in Appendix B" or "designated by the following property description: _____."]

[____. "State" shall mean the State [or Commonwealth] of _____.]

[[____. "State Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, together with accrued interest, that the State of _____ has paid through [insert date] in response to the release or threatened release of hazardous substances at or in connection with the Site, but not including amounts reimbursed to the State by EPA.]]

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. Reimbursement of Response Costs

[Note: If the amount to be paid is \$10,000 or greater, payment should be made by electronic funds transfer using the following Paragraph 4.]

being paid for or compromised, such as: "... for the response action described in the Record of Decision for the First Operable Unit at the Site dated _____" or "for the removal action described in the action memorandum for the Site dated _____." Exercise care in describing the activities covered, as this description may affect the scope of the covenant not to sue and contribution protection. For clarity, the description of the past response action may need to indicate which response actions are not included within the definition of Past Response Costs. Check to be sure that the date used in the definition of Past Response Costs does not inadvertently include costs that are outside the scope of the definition. In some cases, it may be useful to attach a standard, Regionally-prepared cost summary listing the costs that are within the scope of the definition. This may be done: 1) to be sure that no confusion arises as to which costs are being compromised; or 2) to indicate which outstanding past cost claims are being resolved through the settlement, *i.e.*, to indicate that the recovered costs are to be applied to particular portions of the debt.

4. *Payment of Past Response Costs to the EPA Hazardous Substance Superfund.* Within 30 days of entry of this Consent Decree, Settling Defendants shall pay to the EPA Hazardous Substance Superfund \$_____ in reimbursement of Past Response Costs, plus an additional sum for Interest on that amount calculated from the date set forth in the definition of Past Response Costs through the date of payment.⁶ Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, the EPA Region and Site Spill ID Number _____ [insert 4-digit number, first 2 numbers represent the Region (01-10), second 2 numbers represent the Region's Site/Spill Identification number], and DOJ Case Number _____. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of _____ following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendants shall send notice to EPA and DOJ that payment has been made in accordance with Section XI (Notices and Submissions) and to [insert names and mailing addresses of the Regional Financial Management Officer and any other receiving officials at EPA].

[Note: If the amount to be paid is less than \$10,000, payment should be made by check using the following alternative Paragraph 4.]

4. *Payment of Past Response Costs to the EPA Hazardous Substance Superfund.* Within 30 days of entry of this Consent Decree, Settling Defendants shall pay to the EPA Hazardous Substance Superfund \$_____ in reimbursement of Past Response Costs, plus an additional sum for Interest on that amount calculated from the date set forth in the definition of Past Response Costs through the date of payment. Payment shall be made by certified check or checks or cashier's check or checks made payable to "U.S. Department of Justice," referencing the name and address of the party making payment, the EPA Region and Site Spill

⁶As an alternative to calculation and payment of interest from the Past Response Costs date through the date of payment, settling defendants may agree to place the amount agreed upon into an interest-bearing escrow account to be disbursed to EPA upon entry of the consent decree. If this method is used, accrued interest from the Past Response Costs date through the date the escrow account is created should be calculated and included in the escrow deposit.

ID Number _____ [insert 4-digit number, first 2 numbers represent the Region (01-10), second 2 numbers represent the Region's Site/Spill Identification number], USAO File Number _____, and DOJ Case Number _____. Settling Defendants shall send the check[s] to:

[Insert address of Financial Litigation Unit of U.S. Attorney's Office for the District in which the Consent Decree will be entered]

Settling Defendants shall send notice that such payment has been made to EPA and DOJ in accordance with Section XI (Notices and Submissions) and to [insert names and mailing addresses of the Regional Financial Management Officer and any other receiving officials at EPA].

[Note: If payment is to be made to a State, insert the following optional paragraph.]

[[____. *Payment of Past Response Costs to the State.* Within 30 days of entry of this Consent Decree, Settling Defendants shall pay to the State \$_____, in the form of a certified check or checks or cashier's check or checks, in reimbursement of State Past Response Costs. The check[s] shall be made payable to _____ and shall reference [insert name of case]. Settling Defendants shall send the check[s] to: Insert address provided by State]]

VI. Failure to Comply With Requirements of Consent Decree

5. *Interest on Late Payments.* In the event that any payment[s] required by Section V (Reimbursement of Response Costs) or Section VI, Paragraph 6 (Stipulated Penalty), are not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

6. *Stipulated Penalty.*

a. If any amounts due to EPA [or to the State] under this Consent Decree are not paid by the required date, Settling Defendants shall pay to EPA [, or to the State if the delayed payment is for State Past Response Costs,] as a stipulated penalty, in addition to the Interest required by Paragraph 5, \$_____ per violation per day that such payment is late. [[____. If Settling Defendants do not comply with Section ____ (Site Access), Section ____ (Access to Information), or Section ____ [insert cross-reference to any other non-payment requirements for which a stipulated penalty applies], Settling Defendants shall pay to EPA, as a stipulated penalty, \$_____ per violation per day of such noncompliance.]]

[Note: Escalating payment schedules may be used in Paragraph 6(a) and in the optional

paragraph immediately above concerning stipulated penalties for violations of non-payment requirements of the consent decree.]

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA [or the State]. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to: [Insert Regional Lockbox number and address]

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the EPA Region and Site Spill ID Number

_____ [insert 4-digit number, first 2 numbers represent the Region (01-10), second 2 numbers represent the Region's Site/Spill Identification number], USAO File Number _____, and DOJ Case Number _____. Copies of check[s] paid pursuant to this Paragraph, and any accompanying transmittal letter[s], shall be sent to EPA and DOJ as provided in Section XI (Notices and Submissions) and to [insert title and address of Regional Financial Management Officer and any other receiving official at EPA].

[Note: If applicable, insert State payment instructions for stipulated penalties for failure to pay State Past Response Costs.]

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA [or the State] has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

7. If the United States [or the State] brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States [and the State] for all costs of such action, including but not limited to costs of attorney time.

8. Payments made under Paragraphs 5-7 shall be in addition to any other remedies or sanctions available to Plaintiff[s] by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

9. The obligations of Settling Defendants to pay amounts owed the United States [and the State] under this Consent Decree are joint and several. In the event of the failure of any one or more Settling Defendants to make the

payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

10. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

VII. Covenant Not to Sue By Plaintiff[S]

11. *Covenant Not to Sue by United States.* Except as specifically provided in Paragraph 12 (Reservation of Rights by United States), the United States covenants not to sue Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Past Response Costs to the United States) and Section VI, Paragraphs 5 (Interest on Late Payments) and 6(a) (Stipulated Penalty for Late Payment). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

12. *Reservation of Rights by United States.* The covenant not to sue set forth in Paragraph 11 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to:

a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;

b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

c. criminal liability;

d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 6906; and

e. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs.

[Note: If the State is a co-plaintiff, insert separate paragraphs for the State's covenant not to sue settling defendants and reservation of rights.]

VIII. Covenant Not to Sue By Settling Defendants

13. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States [or the State], or its [their] contractors or employees, with respect to Past Response Costs [and State Response Costs] or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at the Site for which the Past Response Costs were incurred; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.⁷

14. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

IX. Effect of Settlement/Contribution Protection

15. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

16. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in

⁷ The settlement should, wherever possible, release or resolve any claims by settling defendants against the United States related to the site. Where a claim is asserted by a potentially responsible party, or the Region has any information suggesting federal agency liability, all information relating to potential federal liability should be provided to the affected agency and DOJ as soon as possible in order to resolve any such issues in the settlement. Settlement of any federal liability will require additional revisions to this document, and model language will be provided separately. Only in exceptional circumstances where federal liability cannot be resolved in a timely manner in the settlement should this provision be deleted and private parties be allowed to reserve their rights.

this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs.⁸

17. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ [and the State] in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ [and the State] in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ [and the State] within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

18. In any subsequent administrative or judicial proceeding initiated by the United States [or the State] for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States [or the State] in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff[s] set forth in Section VII.

[____. Site Access]⁹

[[____. Commencing upon the date of lodging of this Consent Decree, Settling Defendants agree to provide the United States [, the State,] and its [their] representatives, including EPA and its contractors, access at all reasonable times to the Site and to any other property owned or controlled by Settling Defendants to which access is determined by EPA [or the State] to be required for the implementation of this Consent Decree, or for the purpose of

conducting any response activity related to the Site, including but not limited to:

- a. Monitoring of investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to the United States [or the State];
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site; [and]
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section ____ (Access to Information).

[Note: If institutional controls or any other provisions requiring monitoring are included in the decree, also include the following subparagraph g.]

[g. Assessing Settling Defendants' compliance with this Consent Decree.]

____. Notwithstanding any provision of this Consent Decree, the United States [and the State] retain[s] all of its [their] access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. § 6927, and any other applicable statutes or regulations.

____. Notice of Obligations to Successors-in-Title.

a. Within 15 days after entry of this Consent Decree, [Owner Settling Defendants] shall record [insert either "a certified copy of this Consent Decree" or "a notice of the entry of this Consent Decree"] with the Recorder's Office [or Registry of Deeds or other appropriate office], _____ County, State of _____.¹⁰ Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree [and any lien retained by the United States] and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of each [Owner Settling Defendant] with respect to the provision of access under Section ____ (Site Access) [and the implementation of institutional controls under Paragraph ____] shall be binding upon

¹⁰ If an institutional controls provision is included in this section, this paragraph should be amended to require the owner settling defendants to record in the chain of title a restrictive covenant that specifies the institutional controls. The institutional controls to be implemented should be described in an appendix to this decree.

any and all Settling Defendants and upon any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, each [Owner Settling Defendant] shall record at the Recorder's Office [or Registry of Deeds or other appropriate office where land ownership and transfer records are maintained for the property] a notice of obligation to provide access under Section ____ (Site Access) and related covenants, if any. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. Any [Owner Settling Defendant] and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA [and the State] of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendants' obligations under this Consent Decree, including their obligation to provide or secure access pursuant to Section ____ (Site Access), shall continue to be met by Settling Defendants. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of Settling Defendants to comply with this Consent Decree.]]

[____. Access to Information¹¹]

[____. Settling Defendants shall provide to EPA [and the State], upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site [or to the implementation of this Consent Decree], including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

[____. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff[s]

¹¹ Include this section only if settling defendants have been or will be involved in cleanup efforts at the site or if they may possess information which may assist the Agency in its cleanup or enforcement efforts.

⁸In exceptional situations, different coverage may apply.

⁹Include this section if 1) access to the site is needed and 2) the site owner is a settling defendant or other settling defendants control access to the site or to any other property to which access is needed. Renumber sections and paragraphs as necessary. If any of the settling defendants will need to provide institutional controls as part of any response action, include such a provision within this section and change the name of this section to Site Access/Institutional Controls.

under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA [and the State], or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Settling Defendants may assert that certain documents, records or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing documents, they shall provide Plaintiff[s] with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff[s] in redacted form to mask the privileged information only. Settling Defendants shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

_____. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.]]

X. Retention of Records¹²

19. Until ____ years after the entry of this Consent Decree, each Settling

Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

20. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ [and the State] at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ [or the State], Settling Defendants shall deliver any such records or documents to EPA [or the State]. Settling Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff[s] with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff[s] in redacted form to mask the privileged information only. Settling Defendants shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

21. By signing this Consent Decree, each Settling Defendant certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which

relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e) [insert, if applicable, “, and Section 3007 of RCRA, 42 U.S.C. § 6927”].

XI. Notices and Submissions

22. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, [the State,] and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement
Section, Environmental and Natural
Resources Division, U.S. Department
of Justice (DJ # _____), P.O. Box
7611, Washington, D.C. 20044-7611

As to EPA:

[Insert names and addresses of EPA
Regional contacts, usually the ORC
attorney and the RPM or Project
Coordinator]

[As to the State:

Insert name and address of State contact
if the State is a party to the Consent
Decree]

As to Settling Defendants:

[Insert name of one person who will
serve as the contact for all Settling
Defendants]

XII. Retention of Jurisdiction

23. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

¹² Renumber this section and all following section headings and paragraph numbers if either

of the optional sections on Site Access or Access to Information is included.

XIII. Integration/[Appendices]

24. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. [The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the complete list of Settling Defendants; and "Appendix B" is the map of the Site.]

XIV. Lodging and Opportunity for Public Comment

25. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

26. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XV. Effective Date

27. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XVI. Signatories/Service

28. Each undersigned representative of a Settling Defendant to this Consent Decree and the [Assistant Attorney General for the Environment and Natural Resources Division]¹³ of the United States Department of Justice [insert State official] certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

29. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent

Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

30. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

So ordered this _____ day of _____, 19____.

United States District Judge

The Undersigned parties enter into this Consent Decree in the matter of [insert case name and civil action number], relating to the _____ Superfund Site.

For the United States of America
Date: _____

[Name] Assistant Attorney General¹⁴
Environment and Natural Resources
Division, U.S. Department of Justice,
Washington, D.C. 20530

[Name] United States Attorney [Address]

[Name] Attorney, Environmental
Enforcement Section, Environment and
Natural Resources Division, U.S.
Department of Justice, P.O. Box 7611,
Washington, DC 20044-7611

[Name]¹⁵ Assistant Administrator for
Enforcement and Compliance Assurance,
U.S. Environmental Protection Agency,
401 M Street S.W., Washington, D.C.
20460

[Name] Regional Administrator, Region [____]
, U.S. Environmental Protection Agency,
[Address]

[Name] Assistant Regional Counsel, U.S.
Environmental Protection Agency,
[Address]

[[The undersigned party enters into this
Consent Decree in the matter of [insert case
name and civil action number], relating to
the _____ Superfund Site.

For the State of [____]]
Date: _____

[Names and addresses of State signatories]]
The undersigned party enters into this
Consent Decree in the matter of [insert case

¹⁴ See *supra* n. 13.

¹⁵ Include AA-OECA signature block only if he or she has a concurrence role under Delegation No. 14-13-B.

name and civil action number], relating to the _____ Superfund Site.

For Defendant [____]]

Date: _____

[Names and address of Defendant's signatories]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

Address: _____

Environmental Protection Agency
Model CERCLA Section 122(h)(1)
Agreement for Recovery of Past
Response Costs

This model and any internal procedures adopted for its implementation and use are intended as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.

Model CERCLA Section 122(h)(1) Agreement for Recovery of Past Response Costs

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- ____. [Attorney General Approval]
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I. Jurisdiction

In the matter of: [Site Name] [City, County, State] [Names of Settling Parties] Settling Parties

Agreement for Recovery of Past Response Costs

U.S. EPA Region _____
CERCLA Docket No. _____
Proceeding Under Section 122(h)(1) of
CERCLA 42 U.S.C. § 9622(h)(1)

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority

¹³ Substitute Chief, Environmental Enforcement Section, where the case involves less than \$1 million and at least \$500,000 is being recovered by settlement. Note also that Associate Attorney General approval is required if the difference between the total amount of the claim and the amount of the settlement exceeds \$2 million or 15% of claim (whichever is greater). See 28 CFR 0.160.

has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D.

[Note: Also reference any internal Regional redelegations of authority under 14-14-D.]

2. This Agreement is made and entered into by EPA and the [insert names or reference attached appendix listing settling parties] ("Settling Parties"). Each Settling Party consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

II. Background

3. This Agreement concerns the [insert Site name] ("Site") located in [insert Site location]. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

[Note: A brief description of the release or threatened release and of the response actions undertaken may be included.]

5. In performing this response action, EPA incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred at or in connection with the Site.

[Note: If Attorney General approval is not required for this settlement because total past and projected response costs of the United States at the site are not expected to exceed \$500,000, excluding interest, insert the following paragraph and renumber all subsequent paragraphs.]

[_____. The Regional Administrator of EPA Region _____, or his/her delegate, has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.]

7. EPA and Settling Parties desire to resolve Settling Parties' alleged civil liability for Past Response Costs without litigation and without the admission or adjudication of any issue of fact or law.

III. Parties Bound

8. This Agreement shall be binding upon EPA and upon Settling Parties and their [heirs], successors and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such

Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. Definitions

9. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).¹

f. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and the Settling Parties.

h. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through [insert date], plus accrued Interest on all such costs through such date.²

¹ The Superfund currently is invested in 52-week MK bills. The interest rate for these MK bills changes on October 1 of each year. To obtain the current rate, contact Vince Velez, Office of Administration and Resource Management, Financial Management Division, Superfund Accounting Branch, at (202) 260-6465.

² If the past costs settlement is partial, it may be necessary to continue the definition with a brief

i. "Section" shall mean a portion of this Agreement identified by a roman numeral.

j. "Settling Parties" shall mean [insert names of settling parties, or if very numerous, "those parties identified in Appendix _____."]

k. "Site" shall mean the _____ Superfund site, encompassing approximately _____ acres, located at [insert address or description of location] in [insert City, County, State], and [insert either "depicted more clearly on the map included in Appendix _____" or "designated by the following property description: _____."]

l. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. Reimbursement of Response Costs

10. Within 30 days of the effective date of this Agreement, the Settling Parties shall pay to the EPA Hazardous Substance Superfund \$_____ in reimbursement of Past Response Costs, plus an additional sum for Interest on that amount calculated from the date set forth in the definition of Past Response Costs through the date of payment.³

11. Payments shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number _____ [insert 4-digit number, first 2

description of the past response action(s) which are being paid for or compromised, such as: "... for the response action described in the Record of Decision for the First Operable Unit at the Site dated _____" or "for the removal action described in the action memorandum for the Site dated _____." Exercise care in describing the activities covered, as this description may affect the scope of the covenant not to sue and contribution protection. For clarity, the description of the past response action may need to indicate which response actions are not included within the definition of Past Response Costs. Check to be sure that the date used in the definition of Past Response Costs does not inadvertently include costs that are outside the scope of the definition. In some cases, it may be useful to attach a standard, Regionally-prepared cost summary listing the costs that are within the scope of the definition. This may be done: 1) to be sure that no confusion arises as to which costs are being compromised; or 2) to indicate which outstanding past cost claims are being resolved through the settlement, *i.e.*, to indicate that the recovered costs are to be applied to particular portions of the debt.

³ As an alternative to calculation and payment of interest from the Past Response Costs date through the date of payment, settling parties may agree to place the amount agreed upon into an interest-bearing escrow account to be disbursed to EPA upon the effective date of the Agreement. If this method is used, accrued interest from the Past Response Costs date through the date the escrow account is created should be calculated and included in the escrow deposit.

numbers represent the Region (01–10), second 2 numbers represent the Region's Site/Spill Identification number], and the EPA docket number for this action, and shall be sent to:

EPA Superfund

[Insert Regional Superfund lockbox number and address]

12. At the time of payment, each Settling Party shall send notice that such payment has been made to:

[Insert name and address of Regional Attorney and/or Remedial Project Manager]

VI. Failure to Comply With Agreement

13. In the event that any payment required by Paragraph 10 is not made when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

14. If any amounts due to EPA under Paragraph 10 are not paid by the required date, Settling Parties shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 13, \$ _____ per violation per day that such payment is late.

[[Note: If the Agreement includes any non-payment obligations for which a stipulated penalty is due, insert, "If Settling Parties do not comply with [reference sections containing non-payment obligations], Settling Parties shall pay to EPA, as a stipulated penalty, \$ _____ per violation per day of such noncompliance." Escalating penalty payment schedules may be used for payment or non-payment obligations.]]

15. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made in accordance with Paragraphs 11 and 12.

16. Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

17. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Parties' failure to comply with the requirements of this Agreement, any Settling Party who fails

or refuses to comply with any term or condition of this Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. The obligations of Settling Parties to pay amounts owed to EPA under this Agreement are joint and several. In the event of the failure of any one or more Settling Parties to make the payments required under this Agreement, the remaining Settling Parties shall be responsible for such payments.

19. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement.

VII. Covenant Not To Sue By EPA

20. Except as specifically provided in Paragraph 21 (Reservations of Rights by EPA), EPA covenants not to sue Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Reimbursement of Response Costs) and Section VI, Paragraphs 13 (Interest on Late Payments) and 14 (Stipulated Penalty for Late Payment). This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Agreement. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

VIII. Reservations of Rights By EPA

21. The covenant not to sue by EPA set forth in Paragraph 20 does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Parties with respect to all other matters, including but not limited to:

- a. liability for failure of Settling Parties to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural

resources, and for the costs of any natural resource damage assessments.

22. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. Covenant Not To Sue By Settling Parties

23. Settling Parties agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.⁴

24. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. Effect of Settlement/Contribution Protection

25. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA and Settling Parties each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence

⁴The settlement should, wherever possible, release or resolve any claims by settling parties against the United States related to the site. Where a claim is asserted by a potentially responsible party, or the Region has any information suggesting federal agency liability, all information relating to potential federal liability should be provided to the affected agency and DOJ as soon as possible in order to resolve any such issues in the settlement. Settlement of any federal liability will require additional revisions to this document, and model language will be provided separately. Only in exceptional circumstances where federal liability cannot be resolved in a timely manner in the settlement should this provision be deleted and private parties be allowed to reserve their rights.

relating in any way to the Site against any person not a Party hereto.

26. EPA and Settling Parties agree that the actions undertaken by Settling Parties in accordance with this Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

27. The Parties agree that Settling Parties are entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs.

28. Each Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

29. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Paragraph 20.

XI. Retention of Records

30. Until ___ years after the effective date of this Agreement, each Settling Party shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate

in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

31. After the conclusion of the document retention period in the preceding paragraph, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Settling Parties shall deliver any such records or documents to EPA. Settling Parties may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to EPA in redacted form to mask the privileged information only. Settling Parties shall retain all records and documents that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Parties' favor.

32. By signing this Agreement, each Settling Party certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability

regarding the Site, after notification of potential liability or the filing of a suit against the Settling Party regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e) [insert, if applicable, ", and Section 3007 of the Resource, Conservation and Recovery Act, 42 U.S.C. § 6927."]

XII. Notices and Submissions

33. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Parties.

As to EPA:

[Insert names and addresses of EPA Regional contacts, usually the ORC attorney and the RPM or Project Coordinator]

As to Settling Parties:

[Insert name of one person who will serve as the contact for all Settling Parties]

XIII. INTEGRATION/[APPENDICES]

34. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement. [The following appendices are attached to and incorporated into this Agreement: "Appendix A is _____; etc."]

XIV. Public Comment

35. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

____. Attorney General Approval

[Note: This section should be used if Attorney General approval is required for this settlement because total past and projected response costs at the site will exceed \$500,000, excluding interest, and the agreement compromises a claim (i.e., recovers less than 100% of past costs, including accrued interest). If Attorney General approval is required, the Region should consult with DOJ during the negotiations process and should obtain written DOJ approval of the settlement before publishing notice of the proposed agreement in the Federal Register pursuant to Section 122(i) of CERCLA. The Region should discuss with DOJ any significant comments received during the public comment period. If the Region believes that the agreement should be modified based upon public comment, the Region should discuss with the DOJ attorney assigned to the case whether the proposed change will require formal re-approval by DOJ. If this section is used, renumber the Effective Date section and paragraph.]

[[____. The Attorney General or [his/her] designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).]]

XV. Effective Date

36. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 35 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

It is so agreed:
U.S. Environmental Protection Agency

By: _____
[Name]
Regional Administrator, Region ____

[Date]

[Note: If the Regional Administrator has redelegated authority to enter into Section 122(h) settlements, insert name and title of delegated official.]

The undersigned settling party enters into this Agreement in the matter of [insert U.S. EPA docket number], relating to the [insert site name and location]:

For Settling Party:

[Name]

[Address]

By: _____
[Name]

[Date]

[FR Doc. 95-29745 Filed 12-5-95; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5340-4]

National Pollutant Discharge Elimination System (NPDES); Preparation of Draft General Permit for the States of Maine, Massachusetts, and New Hampshire

AGENCY: Environmental Protection Agency.

ACTION: Notice; Preparation of Draft NPDES General Permits—MAG070000, MEG070000, and NHG070000.

SUMMARY: The Regional Administrator of the six states of New England is issuing Notice of a Draft National Pollutant Discharge Elimination System (NPDES) General Permit for construction dewatering facilities in certain waters of the States of Maine, Massachusetts, and New Hampshire. This draft general NPDES Permit establishes notice of intent (NOI) requirements, effluent limitations, standards, prohibitions and management practices for the construction dewatering discharges.

Owners and/or operators of facilities discharging effluent from construction dewatering facilities will be required to submit to EPA, Region I, a notice of intent (NOI) to be covered by the appropriate general permit and will receive a written notification from EPA of permit coverage and authorization to discharge under the general permit.

The draft permit is based on an administrative record available for public review at Environmental Protection Agency, Region I, John F. Kennedy Federal Building, CMA. Boston, Massachusetts 02203.

The following **FACT SHEET AND SUPPLEMENTARY INFORMATION** section sets forth principal facts and the significant factual, legal, and policy questions considered in the development of the draft permits.

DATES: For comment period: Interested persons may submit comments on the draft general permits as part of the administrative record to the Regional Administrator of the six states of New England at the address given in the proceeding **SUMMARY** section no later than 30 days after the date of publication of the draft general permit in the Federal Register.

This general permit shall be effective when issued and will expire five years from the effective date.

For Further Information And Copies of Draft General NPDES Permit: Additional information concerning the draft permit may be obtained between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday excluding holidays from: Suprokash Sarker, Office

of Ecosystem Protection Massachusetts State Program, Environmental Protection Agency, J.F.Kennedy Federal Building. Boston, Massachusetts 02203, Telephone (617) 565-3573.

FACT SHEET AND SUPPLEMENTARY INFORMATION

I. Introduction

The Regional Administrator of the six states of New England is issuing draft general permit for effluent discharges from construction dewatering facilities to certain waters of the States of Maine, Massachusetts, and New Hampshire. Appendix A contains the draft general NPDES permit including Part II, Standard Conditions.

II. Coverage of General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. Although such permits to date have generally been issued to individual discharges, EPA's regulations authorize the issuance of "general permits" to categories of discharges. (See 40 CFR § 122.28 48 FR 14146, April 1, 1983). EPA may issue a single, general permit to a category of point sources located within the same geographic area whose permits warrant similar pollutant control measures.

The Director of an NPDES permit program is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual permits.

Violations of a condition of a general permit constitutes a violation of the Clean Water Act and subjects the discharger to the penalties in Section 309 of the Act.

Any owner or operator authorized by a general permit may be excluded from coverage of a general permit by applying for an individual permit. This request may be made by submitting a NPDES permit application together with reasons supporting the request. The Director may require any person authorized by a general permit to apply for and obtain an individual permit. Any interested person may petition the Director to take

this action. However, individual permits will not be issued for sources discharging effluent from construction dewatering facility covered by this general permit unless it can be clearly demonstrated that inclusion under the general permit is inappropriate.

The Director may consider the issuance of individual permits when:

1. The discharge is a significant contributor of pollution;
2. The discharge is not in compliance with the terms and conditions of the general permit;
3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
4. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general permit;
5. A Water Quality Management plan containing requirements applicable to such point sources is approved; or
6. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

In accordance with 40 CFR 122.28(b)(3)(iv), the applicability of the general permit is automatically terminated on the effective date of the individual permit.

Under this general permit, owners and operators of construction dewatering sites in Massachusetts, Maine and New Hampshire may be granted authorization to discharge groundwater and stormwater generated wastewaters into waters of the respective States. Dewatering associated with the construction of single family homes is not required to have a permit. This permit does not authorize the discharge of stormwater associated with construction sites which disturb greater than 5 acres of land. These sites are required to have a separate NPDES permit for stormwater discharges in accordance with 40 CFR 122.26s(b)(14)(x). Authorization under the permit shall require prior submittal of certain facility information. Upon receipt of all required information, the permit issuing authority may allow or disallow coverage under the general permit.

The following list shows the criteria which will be used in evaluating whether or not an individual permit may be required instead of a general permit.

1. Evaluation of wastewater samples for one whole effluent toxicity-test or

one priority pollutant scan if required by the States and EPA.

2. Preservation of high quality waters and fisheries;
3. Facilities with an effluent discharge flow of over 100gpm
4. Production of effluent at the facility other than groundwater, seepage, and stormwater run-off.
5. History of land use.

The similarity of the discharges has prompted EPA to prepare this draft general permit for public review and comment. When issued, this permit will enable facilities to maintain compliance with the Act and will extend environmental and regulatory controls to a large number of discharges and reduce some permit backlog. The issuance of this general permit for the geographic areas described below is warranted by this similarity of (a) environmental conditions. (b) State regulatory requirements applicable to the discharges and receiving waters, and (c) technology employed.

III. Conditions of the General NPDES Permit

A. Geographic Areas

Maine (Permit No. MEG070000)

All of the discharges to be authorized by the general NPDES permit for the State of Maine from dischargers are limited to Class B,C,SB and SC waters of the State, except lakes. The drainage areas must be more than 10 square miles.

Massachusetts (Permit No. MAG070000)

All of the discharges to be authorized by the general NPDES permit for the Commonwealth of Massachusetts dischargers are limited to Class B, and SB waters as designated in Massachusetts Water Quality Standards, 314 CMR 4.00 *et seq.* Discharges into Class A water needs review and approval by MADEP.

New Hampshire (Permit No. NHG070000)

All of the discharges to be authorized by the general NPDES permit for the State of New Hampshire dischargers are into all waters of the State of New Hampshire unless otherwise restricted by the State Water Quality Standards, New Hampshire RSA 485-A:8. (or as revised).

B. Notification by Permittees

Operators of facilities whose discharge, or discharges, are described in Section II and whose facilities are located in the geographic areas described in Section III. A. above may submit to the Regional Administrator, of

New England, and each State, a notice of intent to be covered by the appropriate general permit. This written notification must include the owner's or operator's legal name and address; the facility name and address; the type of facilities to be covered, the number of discharge points including the anticipated duration, volume, and rate of discharge for each outfall; a topographic map (or other map if a topographic map is not available) indicating the facility locations; a description of any wastewater treatment; storage of petroleum and chemicals on site; history of land use of the site; and the names of the receiving waters into which discharge will occur. In addition one Whole Effluent Toxicity (WET) test result and/or one priority pollutant scan of the water to be discharged may be required, on a case by case bases by the States and/or EPA. The whole effluent toxicity test will consist of one chronic and modified acute toxicity screening test with one hundred percent sample. The Ceriodaphnia dubia for fresh water and sea-urchin for marine water shall be used as test organism. A copy of the test procedure and detailed protocol will be provided by EPA. The results of the chronic biological test (C-NOEC) or the priority pollutant scan will be forwarded to the State and EPA when required.

A determination is required as to whether or not the facility's discharge will adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat (see Part F).

The facilities authorized to discharge under a final general permit will receive written notification from EPA within 30 days with State concurrence where necessary upon receipt of the complete application including necessary sampling data. Failure to respond by the State or EPA within this period, the permit will be automatically effective after 30 days of the complete notification.

C. Effluent Limitations

1. Statutory Requirements

The Clean Water Act (the Act) prohibits the discharge of pollutants to waters of the United States without a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the Act. The NPDES Permit is the mechanism used to implement technology and water quality based effluent limitations and other requirements including monitoring and reporting. The NPDES permit was developed in accordance with various

statutory and regulatory authorities established pursuant to the Act. The regulations governing the EPA NPDES Permit program are generally found at 40 CFR parts 122, 124, 125 and 136.

EPA is required to consider technology and water quality requirements when developing permit limits. 40 CFR part 125 Subpart A sets the criteria and standards that EPA must use to determine which technology based requirements, requirements under Section 301(b) of the Act and/or requirements established on a case-by-case basis under section 402(a)(1) of the Act, should be included in the permit.

The Clean Water Act requires that all discharges, at a minimum, must meet effluent limitations based on the technological capability of dischargers to control pollutants in their discharge. Section 301(b)(1)(A) of the Act requires the application of Best Practicable Control Technology Currently Available (BPT) with the statutory deadline for compliance being July 1, 1977, unless otherwise authorized by the Act. Section 301(b)(2) of the Act requires the application of Best Conventional Control Technology (BCT) for conventional pollutants, and Best Available Technology Economically Achievable (BAT) for non-conventional and toxic pollutants. The compliance deadline for BCT and BAT being March 31, 1980.

2. Technology-Based Effluent Limitations

EPA has not promulgated National Effluent Guidelines for construction dewatering facilities. For a category where Guidelines have been promulgated, the issuance of an individual permit for the discharges would be more appropriate (See 40 CFR 122.28(b)(3)(i)(C)). Therefore, as provided in Section 402(a)(1) of the Act, EPA has determined to issue this general permit utilizing Best Professional Judgement (BPT) to meet the above stated criteria for BAT/BCT described in Section 304(b) of the Act. Accordingly monthly average and maximum daily Total Suspended Solids (TSS) limitation are established based upon best professional judgement pursuant to Section 402(a)(1) of the CWA.

3. Water Quality Based Effluent Limitations

Under Section 301(b)(1)(C) of the Act, discharges are subject to effluent limitations based on water quality standards and to the conditions of State certification under Section 401 of the Act. Receiving stream requirements are established according to numerical and

narrative standards adopted under state and/or federal law for each stream use classification. The CWA requires that EPA obtain State certification which states that all water quality standards will be satisfied. Regulations governing State certification are set forth in 40 CFR 124.53 and 124.55.

Section 101(a)(3) of the Act specifically prohibits the discharge of toxic pollutants in toxic amounts. The States of Maine, Massachusetts, and New Hampshire have similar narrative criteria in their water quality regulations (See Maine Title 38, Article 4-A, section 420 and section 464.4.A.(4); Massachusetts 314 CMR 4.05(5)(e); and New Hampshire Part Env-Ws 432.02(c)(4) that prohibits such discharges). The permit does not allow for the addition of materials or chemicals in amounts which would produce a toxic effect to any aquatic life.

The effluent from the construction dewatering facilities may contain toxic pollutants and oil and grease in the underground water and stormwater runoff. Water Quality Standards and State certification requirements applicable to these discharges have been reviewed by EPA.

D. Antidegradation Provisions

The conditions of the permit reflect the goal of the CWA and EPA to achieve and maintain water quality standards. The environmental regulations pertaining to the State Antidegradation Policies which protect the State's surface waters from falling below State standards for water quality are found in the following provisions: Maine Title 38, Article 4-A, Section 464.4.F.; Massachusetts Water Quality Standards 314 CMR 4.04 Antidegradation Provisions; and New Hampshire policy RSA 485-A:8, VI Part Env-Ws 437.01 and Env-Ws 437.02.

Compliance with the antidegradation provisions of this general permit for class B,C, SB, and SC for the State of Maine, Class B and SB for Massachusetts and all waters of New Hampshire unless otherwise restricted by the State Water Quality Standards, are expected to result in insignificant effect to the receiving water. No further antidegradation review will be required. For the State of Massachusetts discharges in the Class A water needs antidegradation review.

E. Monitoring and Reporting Requirements

Effluent limitations and monitoring requirements are included in the general permit describing requirements to be imposed on facilities to be covered.

Facilities covered by the final general permits will be required to prepare a Discharge Monitoring Report containing effluent data and shall be kept on site in a secured place.

The monitoring requirements have been established to yield data representative of the discharge under authority of Section 308(a) of the Act and 40 CFR 122.41(j), 122.44(i) and 122.48, and as certified by the State.

F. Endangered Species

Discharges that may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat are not authorized under this general permit without the written approval of the Fish and Wildlife Service and/or the National Marine Fisheries Service.

The Fish and Wildlife Service has indicated that the dwarf wedge mussel (*Alsmidonta heterodon*), a Federally listed endangered species, occurs in a stretch of the Connecticut River from Lebanon, New Hampshire to Weathersfield Bow, Vermont, in the Ashuelot River in Keene, New Hampshire and historically from a number of rivers in Massachusetts. Any facility whose discharge may adversely effect the mussel or any other threatened or endangered species or its habitat is required to contact the Fish and Wildlife Service at the following address in order to make a formal determination: United States Department of the Interior, Fish and Wildlife Service, 400 Ralph Hill Marketplace, 22 Bridge Street, Concord, New Hampshire 03301-4901.

The National Marine Fisheries Service has indicated that the endangered shortnose sturgeon (*Acipenser brevirostrum*) inhabits certain sections of the Penobscot, Kennebec and Androscoggin Rivers in Maine, and the Merrimack and Connecticut Rivers in Massachusetts. Any facility whose discharge may adversely effect the sturgeon, or any other threatened or endangered species or its habitat, is required to contact the national Marine Fisheries Service at the following address: United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Habitat and Protected Resources Division, One Blackburn Drive, Gloucester, Massachusetts 01903-2298.

G. Other Requirements

The remaining conditions of the permit are based on the NPDES regulations 40 CFR Parts 122 through 125 and consist primarily of

management requirements common to all permits.

IV. State Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The section 401 certification is under process for all States. In addition the State of Massachusetts and EPA jointly issue the final permit.

V. Administrative Aspects

A. Request To Be Covered

A facility is not covered by any of these general permits until it meets the following requirements. First, it must send a notice of intent to EPA and the appropriate State indicating it meets the requirements of the permit and wants to be covered. And second, it must be notified in writing by EPA that it is covered by this general permit.

Any facility operating under any effective individual NPDES permit may request that the individual permit be revoked and that coverage under the general permit granted, as outlined in 40 CFR 122.28(b)(3)(v). If EPA grants coverage under the general permit, EPA will so notify the facility and revoke the individual permit.

Facilities with expired individual permits that have been administratively continued in accordance with § 122.6, may apply for coverage under this general permit. When coverage is granted, the expired individual permit automatically will cease being in effect.

B. The Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.*, and its implementing regulations [15 CFR Part 930] requires that any federally licensed activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) be determined to be consistent with the CZMP. EPA, New England Region, has determined that these general NPDES permits are consistent with the CZMP. EPA has sent copies of the draft general NPDES permits to the Massachusetts, Maine, and New Hampshire coastal zone agencies for a determination that they are consistent with their respective State policies.

C. The Endangered Species Act

EPA, New England Region, has concluded that the discharges to be

covered by the general NPDES permits will not affect or jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service have been forwarded copies of the draft general NPDES permits for concurrence.

D. Environmental Impact Statement Requirements

The general permits do not authorize the construction of any water resources project or the impoundment of any water body or have any effect on historical property, and are not major Federal activities needing preparation of any Environmental Impact Statement. Therefore, the Wild and Scenic Rivers Act, 16 U.S.C. 1273 *et seq.*, the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*, and the National Environmental Policy Act, 33 U.S.C. 4321 *et seq.*, do not apply to the issuance of this general NPDES permit.

E. This Permit Does Not Constitute Authorization Under 33 U.S.C. 1344 (Section 404 of the Clean Water Act) of Any Stream Dredging or Filling Operation.

VI. Other Legal Requirements

A. Economic Impact (Executive Order 12291)

EPA has reviewed the effect of Executive Order 12291 on this draft general permit and has determined that it is not a major rule under that order. This regulation was submitted previously to the Office of Management and Budget for review as required by Executive Order 12291. The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that Order.

B. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities by these draft general NPDES permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of these draft permits have already been approved by the Office of Management and Budget under submissions made for the NPDES permit program under the provisions of the Clean Water Act. No comments from the Office of Management and Budget or the public were received on the information collection requirements in these permits.

C. The Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this permit does not have a significant impact on a substantial number of small entities. Moreover, the draft permit will reduce a significant administrative burden on regulated sources.

Dated: November 22, 1995.

John P. DeVillars,
Regional Administrator.

Appendix A—Draft General Permit Under the National Pollutant Discharge Elimination System (NPDES)

Note: The Following general NPDES permit is a combination of three permits for purposes of this Federal Register notice in order to eliminate duplication of material common to all permits for the individual states.

1. Massachusetts, Maine and New Hampshire General Permit.

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.* the "CWA") operators of facilities may discharge groundwater and stormwater from construction dewatering facilities into waters of the respective states in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. This permit does not authorize to discharge stormwater associated with Industrial activities from construction sites which disturb greater than 5 acres of land [40 CFR 122.26(b)(14)(x)].

This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the Federal Register Publication.

This permit consists of Part I below including effluent limitations, monitoring requirements etc. and Part II General Requirements.

Operators of facilities within the general permit area who fail to notify the Director of their intent to be covered by this general permit and receive no written notification of permit coverage or those who are denied by the Director are not authorized under this general permit to discharge from those facilities to the receiving waters.

Signed this _____ day of _____
David A. Fierra Director, Office of Ecosystem Protection, Environmental Protection Agency, Region I, Boston, Massachusetts.

Andrew Gottlieb, Director, Office of Watershed Management, Department of Environmental Protection,

Commonwealth of Massachusetts,
Boston, MA.

Part I

A. Effluent Limitations and Monitoring Requirements

1. During the period beginning effective date and lasting through expiration, the permittee is authorized

to discharge from each outfall effluent from construction dewatering facilities to the receiving waters of the respective States.

a. Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations		Monitoring requirements measurement ²	
	Average monthly	Maximum daily	Frequency	Sample type
Flow (MGD)	Report .....	.....	1/week	Instantaneous or continuous.
TSS (mg/l)	50	100	1/week	Grab.
Oil and Grease (mg/l) ¹	See note A.1.h. ....	.....	1/week	Grab.
pH ¹	See Note A 1.g. ....	.....	1/week	Grab.

¹ Requirement for the State Certification.
² Samples shall be taken only when discharging.

b. Massachusetts and Maine.
The discharge shall not cause objectionable discoloration of the receiving waters.

New Hampshire

The discharge shall not cause any discoloration of Class A receiving waters or any visible and objectionable discoloration of Class B receiving waters.

C. There shall be no discharge of floating solids or visible foam. The discharge shall be adequately treated to insure that the effluent remains free from pollutants in concentrations or combinations that settle to form harmful deposits, float as foam, debris, scum or other visible pollutants. In addition for the State of New Hampshire the discharge shall not cause the naturally occurring turbidity in Class A receiving waters to change or cause the naturally occurring turbidity in Class B waters to be increased by more than 10 NTU.

d. The effluent limitations are based on the state water quality standard and are certified by the states.

e. Samples taken in compliance with the monitoring requirements specified above shall be taken at the point of discharge.

f. All discharges as designated in Section II of Supplementary Information shall pass through settling basins or interceptor structures or other approved treatment system and meet the effluent limitations in Part I.A.1.a. prior to discharge to waters of the states.

g. pH.

Massachusetts

The pH of the effluent shall not be less than nor greater than the range given for the receiving water classifications, unless these values are exceeded due to natural causes. The following table specifies ranges for Massachusetts:

Classification	Range
B	6.5–8.3
SB	6.5–8.5

Maine

The pH range in both freshwater and saltwater is 6.0 to 8.5 su. unless establishes on a case-by-case basis (By State Policy).

New Hampshire

The pH of the effluent shall not be less than 6.5 standard units (su) nor greater than 8.0 su at any time unless these values are exceeded due to natural causes.

h. Sampling for oil and grease should only be required if a periodic inspection of the discharge indicates the presence of a visible sheen.

i. A discharge structure shall be constructed if necessary to protect the erosion of the bank of the water body.

B. Monitoring and Reporting

Maine, Massachusetts and New Hampshire

Monitoring results obtained during the previous month shall be summarized on separate Discharge Monitoring Report Form(s) and shall be kept on-site in a secured place. The reports should be readily available for review at any time during the working hours by the EPA and State Officials.

The following are the EPA and state addresses for any notification and communication.

a. Planning and Administrative Unit, Office of Environmental Stewardship, Environmental Protection Agency, Post Office Box 8127, Boston, MA 02114.

b. Massachusetts Division of Water Pollution Control

(1) The Regional offices:
Massachusetts Department of Environmental Protection,

Massachusetts Division of Water Pollution Control, Western Regional Office, 436 Dwight St., Suite 402 Springfield, MA 01101.

Massachusetts Department of Environmental Protection, Massachusetts Division of Water Pollution Control, Southeastern Regional Office, 20 Riverside Drive Lakeville, MA 02346.

Massachusetts Department of Environmental Protection Massachusetts Division of Water Pollution Control, Northeastern Regional Office, 10 Commerce Way, Woburn, MA 01801.

Massachusetts Department of Environmental Protection, Massachusetts Division of Water Pollution Control, Central Regional Office, 75 Grove Street, Worcester, Massachusetts 01605.

(2) Massachusetts Department of Environmental Protection, Office of Watershed Management, 40 Institute Road, North Grafton, MA 01536.

c. Maine Department of Environmental Protection.
State of Maine Department of Environmental Protection, Operation and Maintenance Division, State House, Station 17. Augusta, ME 04333.

d. New Hampshire Department of Environmental Services.
New Hampshire Department of Environmental Services, Water Supply and Pollution Control Division, Permits and Compliance Section; P.O. Box 95, Concord, New Hampshire 03302-0095.

C. Additional General Permit Conditions

1. Notification Requirements

a. Written notification of commencement of operations including the legal names and addresses of the owners and operator and the locations, number and type of facilities and/or operations covered shall be submitted.

(1) For existing discharges within 180 days after the effective date of this permit, by operators whose facilities and/or operations are discharging into the general permit area on the effective date of the permit; or

(2) For new or substantially increased discharges 30 days prior to commencement of the discharge by operators whose facilities and/or operations commence discharge subsequent to the effective date of this permit.

b. Operators of facilities and/or operations within the general permits area who fail to notify the Director of their intent to be covered by this general permit and do not obtain written authorization of coverage are not authorized under this general permit to discharge from those facilities into the named receiving waters.

2. Termination of Operations

Operators of facilities and/or operators authorized under this permit shall notify the Director upon the termination of discharges. The notice must contain the name, mailing address, and location of the facility for which the notification is submitted, the NPDES permit number for the water treatment facility discharge identified by the notice, and an indication of whether the operator of the discharge has changed. The notice must be signed in accordance with the signatory requirements of 40 CFR § 122.22.

3. Renotification

Upon reissuance of a new general permit, the permittee is required to notify the Director of the intent to be covered by the new general permit.

4. When the Director May Require Application for an Individual NPDES Permit

a. The Director may require any person authorized by this permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take such action. Instances where an individual permit may be required include the following:

(1) The discharge(s) is a significant contributor of pollution;

(2) The discharger is not in compliance with the conditions of this permit;

(3) A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point source;

(4) Effluent limitation guidelines are promulgated for point sources covered by this permit;

(5) A Water Quality Management Plan containing requirements applicable to such point source is approved; or

(6) The point source(s) covered by this permit no longer:

(a) Involves the same volume or substantially similar types of operations;

(b) Discharges the same type of wastes;

(c) Requires the same effluent limitations or operating conditions;

(d) Requires the same or similar monitoring and

(e) In the opinion of the Director is more appropriately controlled under a general permit than under an individual NPDES permit.

b. The Director may require an individual permit only if the permittee authorized by the general permit has been notified in writing that an individual permit is required, and has been given a brief explanation of the reasons for this decision.

5. When an Individual NPDES Permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to that owner or operator is automatically terminated on the effective date of the individual permit.

Part II, Standard Conditions

Section A. General Requirements

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

a. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405 (d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

b. The CWA provides that any person who violates Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any of such sections in a permit issued under Section 402, or any requirement imposed in a pretreatment program approved under Sections 402(a)(3) or 402(b)(8) of the CWA is subject to a civil penalty not to exceed \$25,000 per day for each violation. Any person who negligently violates such requirements is subject to a fine of not

less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both. Any person who knowingly violates such requirements is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. Note: See 40 CFR § 122.41(a)(2) for additional enforcement criteria.

c. Any person may be assessed an administrative penalty by the Administrator for violating Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the CWA. Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000. Penalties for Class II violations are not to exceed \$10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$125,000.

2. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

3. Duty to Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator, upon request, copies of records required to be kept by this permit.

4. Reopener Clause

The Regional Administrator reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedules of compliance, or other provisions which may be authorized under the CWA in order to bring all discharges into compliance with the CWA.

5. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or

penalties to which the permittee is or may be subject under Section 311 of the CWA, or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

6. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges.

7. Confidentiality of Information

a. In accordance with 40 CFR Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR Part 2 (Public Information).

b. Claims of confidentiality for the following information *will* be denied:

- (i) The name and address of any permit applicant or permittee;
- (ii) Permit applications, permits, and effluent data as defined in 40 CFR § 2.302(a)(2).

c. Information required by NPDES application forms provided by the Regional Administrator under § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

8. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after its expiration date, the permittee must apply for and obtain a new permit. The permittee shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Regional Administrator. (The Regional Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

9. State Authorities

Nothing in Part 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

10. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, nor does it relieve the permittee of its obligation to comply with any other applicable Federal, State, and local laws and regulations.

Section B. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Bypass

a. Definitions.

(1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to

assure efficient operation. These bypasses are not subject to the provisions of Paragraphs B.4.c and 4.d of this section.

c. Notice.

(1) Anticipated bypass.

If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass.

The permittee shall submit notice of an unanticipated bypass as required in Paragraph D.1.e (24-hour notice).

d. Prohibition of bypass.

(1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c)(i) The permittee submitted notices as required under Paragraph 4.c of this section.

(ii) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in Paragraph 4.d of this section.

5. Upset

a. *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary non-compliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Paragraph B.5.c of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance,

is final administrative action subject to judicial review.

c. *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in Paragraphs D.1.a and 1.e (24-hour notice); and

(4) The permittee complied with any remedial measures required under B.3. above.

d. *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

Section C. Monitoring and Records

1. Monitoring and Records

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application except for the information concerning storm water discharges which must be retained for a total of 6 years. This retention period may be extended by request of the Regional Administrator at any time.

c. Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individual(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The individual(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

d. Monitoring results must be conducted according to test procedures

approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, unless other test procedures have been specified in the permit.

e. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The permittee shall allow the Regional Administrator, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. Reporting Requirements

a. *Planned changes.* The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants

discharged. This notification applies to pollutants which are subject to the effluent limitations in the permit, nor to the notification requirements under 40 CFR 122.42(a)(1).

(3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition or change may justify the application of permit conditions different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

b. *Anticipated noncompliance.* The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. *Transfers.* This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See § 122.61; in some cases, modification or revocation and reissuance is mandatory.)

d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Regional Administrator for reporting results of monitoring of sludge use or disposal practices.

(2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Administrator.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

e. Twenty-four hour reporting

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any

information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances.

A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances.

The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See § 122.41(g))

(b) Any upset which exceeds any effluent limitation in the permit.

(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in the permit to be reported within 24 hours. (See § 122.44(g))

(3) The Regional Administrator may waive the written report on a case-by-case basis for reports under Paragraph D.1.e if the oral report has been received within 24 hours.

f. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

g. *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under Paragraphs D.1.d, D.1.e and D.1.f of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph D.1.e of this section.

h. *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, it shall promptly submit such facts or information.

2. Signatory Requirement

a. All applications, reports, or information submitted to the Regional Administrator shall be signed and certified. (See § 122.22)

b. The CWA provides that any person who knowingly makes any false statement, representation, or

certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. Availability of Reports

Except for data determined to be confidential under Paragraph A.8. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Regional Administrator. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the CWA.

Section E. Other Conditions

1. *Definitions* for purposes of this permit are as follows:

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge" or a related activity is subject to, including water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions.

Average. The arithmetic mean of values taken at the frequency required for each parameter over the specified period. For total and/or fecal coliforms, the average shall be the geometric mean.

Average monthly discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average weekly discharge limitation means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all daily discharges measured during a calendar

week divided by the number of daily discharges measured during that week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Best Professional Judgement (BPJ) means a case-by-case determination of Best Practicable Treatment (BPT), Best Available Treatment (BAT) or other appropriate standard based on an evaluation of the available technology to achieve a particular pollutant reduction.

Composite Sample—A sample consisting of a minimum of eight grab samples collected at equal intervals during a 24-hour period (or lesser period as specified in the section on Monitoring and Reporting) and combined proportional to flow, or a sample continuously collected proportionally to flow over that same time period.

Continuous Discharge means a "discharge" which occurs without interruption throughout the operating hours of the facility except for infrequent shutdowns for maintenance, process changes, or similar activities.

CWA or "The Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117; 33 U.S.C. §§ 1251 *et seq.*

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the daily discharge is calculated as the average measurement of the pollutant over the day.

Director means the person authorized to sign NPDES permits by EPA and/or the State.

Discharge Monitoring Report Form (DMR) means the EPA standard national form, including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by

EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

Discharge of a pollutant means:

(a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or

(b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

This term does not include an addition of pollutants by any "indirect discharger."

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

Effluent limitations guidelines means a regulation published by the Administrator under Section 304(b) of CWA to adopt or revise "effluent limitations."

EPA means the United States "Environmental Protection Agency."

Grab Sample—An individual sample collected in a period of less than 15 minutes.

Hazardous Substance means any substance designated under 40 CFR Part 116 pursuant to Section 311 of CWA.

Maximum daily discharge limitation means the highest allowable "daily discharge."

Municipality means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal or sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management agency under section 208 of CWA.

National Pollutant Discharge Elimination System means the national program for issuing, modifying,

revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an "approved program."

New discharger means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants";

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source"; and

(d) Which has never received a finally effective NPDES permit for discharges at that "site".

This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979.

It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122.(a) (1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under Section 306 of CWA which are applicable to such.

(b) After proposal of standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.

NPDES means "National Pollutant Discharge Elimination System."

Non-Contact Cooling Water is water used to reduce temperature which does not come in direct contact with any raw material, intermediate product, a waste product or finished product.

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES programs.

Permit means an authorization, license, or equivalent control document issued by EPA or an "approved State."

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Point source means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al. v. Train*, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of 40 CFR Part 122.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

State means any of the 3 States of Maine, Massachusetts and New Hampshire.

Secondary Industry Category means any industry category which is not a "primary industry category."

Toxic pollutant means any pollutant listed as toxic in Appendix D of 40 CFR Part 122, under Section 307(a)(1) of CWA.

Uncontaminated storm water is precipitation to which no pollutants have been added and has not come into direct contact with any raw material, intermediate product, waste product or finished product.

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands."

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a)–(d) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)–(f) of this definition.

Whole Effluent Toxicity (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

2. Abbreviations when used in this permit are defined below:

cu. M/day or M3/day—cubic meters per day

mg/l—milligrams per liter

µg/l—micrograms per liter

lbs/day—pounds per day

kg/day—kilograms per day

Temp. °C—temperature in degrees Centigrade

Temp. °F—temperature in degrees Fahrenheit

Turb.—turbidity measured by the Nephelometric Method (NTU)

pH—a measure of the hydrogen ion concentration

CFS—cubic feet per second

MGD—million gallons per day

Oil & Grease—Freon extractable material

ml/l—milliliter(s) per liter

Cl₂ total residual chlorine.

[FR Doc. 95-29742 Filed 12-5-95; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

November 27, 1995.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before February 5, 1996.

If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202-418-0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060-0054.

Title: Application for Exemption From Ship Station Requirements.

Form No.: FCC 820.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; Small businesses or organizations; Individuals or households.

Number of Respondents: 200.

Estimated Time Per Response: 1 hour and 10 minutes (1.166).

Total Annual Burden: 233 hours.

Needs and Uses: FCC Rules require this collection of information when exemptions from radio provisions of statute, treaty or international agreement are requested. The data is used by examiners to determine the applicants qualifications for the requested exemption. The data collected is required by the Communications Act of 1934, as amended; International Treaties and FCC Rules 47 CFR Parts 1.922, 80.19 and 80.59.

OMB Approval Number: 3060-0105.

Title: Licensee Qualification Report.

Form No.: FCC 430.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; Small businesses or organizations.

Number of Respondents: 1,900.

Estimated Time Per Response: 2 hour.

Total Annual Burden: 3,800 hours.

Needs and Uses: This collection of information enables Commission personnel to determine whether applicants are legally qualified to become or to remain common carrier telecommunications licensees. If the information is not collected, the Commission would be unable to fulfill its responsibility under the Communications Act to make a finding as the legal qualifications of an applicant or licensee. The data collected is required by the Communications Act of 1934, as amended; FCC Rules

21.11(a), 22.11(a), 25.11(a), 25.114(c), 25.115(c), and 25.141(c). To reduce paperwork burden, applicants may submit letters in lieu of completing the FCC 430 in those cases in which there has been no change in any of the required information to satisfy the annual requirement.

OMB Approval Number: 3060-0541.

Title: Transmittal Sheet for Phase 2 Cellular Applications for Unserved Areas.

Form No.: FCC 464-A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; Small businesses or organizations.

Number of Respondents: 10,000.

Estimated Time Per Response: 10 minutes (.166 hour).

Total Annual Burden: 1,660 hours.

Needs and Uses: The information collected will be used by the Commission to determine whether the applicant is qualified legally, technical, and financially to be licensed as a cellular operator. Without such information, the Commission could not determine whether to issue licenses to the applicants that provide telecommunication services to the public and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. The transmittal sheet facilitates application intake and other processing functions. The applicant must certify on the form that the application is complete in every respect and contains all the information required by the Commission's cellular rules. The data collected is required by the Communications Act of 1934, as amended and Commission Rules 22.6(a)(2). The Form 464-A was previously filed in conjunction with FCC Form 401. FCC Form 401 is now obsolete and has been replaced by FCC Form 600. There is no change to the burden hours.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95-29654 Filed 12-5-95; 8:45 am]

BILLING CODE 6712-01-F

Notice of Public Information Collections being Reviewed by the Federal Communications Commission, Comments Requested

November 27 1995.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to

take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 5, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202-418-0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060-0020.

Title: Application for Ground Station Authorization in the Aviation Services.

Form No.: FCC 406.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit; Small businesses or organizations; Individuals or households; State or Local Governments; Non-profit institutions.

Number of Respondents: 1,600.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 1,600 hours.

Needs and Uses: FCC Rules require the collection of this information on new, modifications, renewal with modifications and assignments of Ground station authorizations. Data is used to update the existing database and make efficient use of the frequency spectrum. Data is also used by Compliance personnel in conjunction with Field Engineers for enforcement and interference resolutions. The data collected is required by the Communications Act of 1934, as amended; International Treaties and FCC Rules 47 CFR Parts 1.922, 1.924, 87.21 and 87.31. The Commission

intends to revise the FCC Form 406 to collect only metric measurements in lieu of English measurements and to add a space for applicant to provide a FAX number. The number of responses and estimated burden remains unchanged.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95-29655 Filed 12-5-95; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1074-DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA-1074-DR), dated October 27, 1995, and related determinations.

EFFECTIVE DATE: November 28, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 27, 1995:

Palm Beach County for Public Assistance (already designated for Individual Assistance and Hazard Mitigation Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 95-29705 Filed 12-5-95; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL RESERVE SYSTEM

Jerry G. and Helen W. Standridge, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank

holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 20, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Jerry G. and Helen W. Standridge Revocable Trust, and Jerry G. and Helen Standridge, Trustees*, all of Chickasha, Oklahoma; to acquire an additional .26 percent, for a total of 10.24 percent, of the voting shares of Chickasha Bancshares, Inc., Chickasha, Oklahoma, and thereby indirectly acquire Chickasha Bank and Trust Company, Chickasha, Oklahoma.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Conrad Milton Newton, III*, Dawson, Texas; to acquire an additional 21.54 percent, for a total of 44.13 percent of the voting shares of Dawson Bancshares, Inc., Dawson, Texas, and thereby indirectly acquire First Bank & Trust Company, Dawson, Texas.

Board of Governors of the Federal Reserve System, November 30, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-29645 Filed 12-5-95; 8:45 am]

BILLING CODE 6210-01-F

The First Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for

inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 2, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *The First Bancshares, Inc.*, Hattiesburg, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Mississippi, Hattiesburg, Mississippi (in organization).

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Chemical Financial Corporation*, Midland, Michigan; to merge with State Savings Bancorp, Inc., Caro, Michigan, and thereby indirectly acquire State Savings Bank of Caro, Caro, Michigan.

2. *First Decatur Bancshares, Inc.*, Decatur, Illinois; to acquire 100 percent of the voting shares of First Shelby Financial Group, Inc., Shelbyville, Illinois, and thereby indirectly acquire First Trust Bank of Shelbyville, Shelbyville, Illinois.

Board of Governors of the Federal Reserve System, November 30, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-29644 Filed 12-5-95; 8:45 am]

BILLING CODE 6210-01-F

First Bancshares, Inc.; Notice of Proposal to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has given notice under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank

holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether commencement of the activity can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 20, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Bancshares, Inc.*, Grove Hill, Alabama; to continue engaging *de novo* through its subsidiary, I & I, Inc., Grove Hill, Alabama, in insurance agency activities in a town of less than 5,000 in population, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 30, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-29643 Filed 12-5-95; 8:45 am]

BILLING CODE 6210-01-F

Federal Open Market Committee; Domestic Policy Directive of September 26, 1995.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on September 26, 1995.¹ The directive was issued to the

¹ Copies of the Minutes of the Federal Open Market Committee meeting of September 26, 1995,

Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity is expanding at a moderate rate in the current quarter. Nonfarm payroll employment increased considerably in August after essentially no growth in July; the civilian unemployment rate edged down to 5.6 percent in August. Industrial production posted a large increase in August to a level moderately above the average of the second quarter. Total nominal retail sales rose slightly on balance over July and August after registering appreciable gains in the prior two months. Housing starts were up a little in August after increasing sharply in July. Orders for nondefense capital goods have softened but still point to substantial expansion of spending on business equipment over coming months; nonresidential construction has been strong of late. The nominal deficit on U.S. trade in goods and services widened slightly in July from its average rate in the second quarter. After increasing at elevated rates in the early part of the year, consumer and producer prices have risen more slowly in recent months.

Market interest rates have fallen somewhat since the Committee meeting on August 22. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies has declined over the intermeeting period, with most of the decline occurring over the past several days.

M2 and M3 continued to register sizable increases in August but growth of those aggregates appears to have moderated somewhat in September. For the year through August, M2 expanded at a rate somewhat below the upper end of its range for 1995 and M3 grew at a rate appreciably above its range. Total domestic nonfinancial debt has grown at a rate around the midpoint of its monitoring range in recent months.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the range it had established on January 31-February 1 for growth of M2 of 1 to 5 percent, measured from the fourth quarter of 1994 to the fourth quarter of 1995. The Committee also retained the monitoring range of 3 to 7

percent for the year that it had set for growth of total domestic nonfinancial debt. The Committee raised the 1995 range for M3 to 2 to 6 percent as a technical adjustment to take account of changing intermediation patterns. For 1996, the Committee established on a tentative basis the same ranges as in 1995 for growth of the monetary aggregates and debt, measured from the fourth quarter of 1995 to the fourth quarter of 1996. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth in M2 and M3 over the balance of the year near the pace of recent months.

By order of the Federal Open Market Committee, November 27, 1995.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 95-29696 Filed 12-5-95; 8:45 am]

BILLING CODE 6210-01-F-M

OFFICE OF GOVERNMENT ETHICS

Submission of Proposed Modified Form for Executive Branch Confidential Financial Disclosure Reporting to OMB for Approval Under the Paperwork Reduction Act

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics has submitted a proposed new OGE Form 450 for confidential financial disclosure reporting under its executive branch regulations for approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This new form will replace the existing Standard Form (SF) 450.

DATES: Comments on this proposal should be received by January 5, 1996.

ADDRESSES: Comments should be sent to Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of

Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; telephone: 202-395-7316.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of the General Counsel and Legal Policy, Office of Government Ethics, 1201 New York Avenue, NW., Washington, DC 20005-3917; telephone: 202-523-5757 (ext. 1110), FAX: 202-523-6325. A copy of OGE's draft form, as well as the rest of OGE's paperwork submission package to OMB, may be obtained, without charge, by contacting Mr. Gressman.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is submitting a proposed new OGE Form 450 Executive Branch Confidential Financial Disclosure Report for three-year approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). On September 1, 1995, OGE published an advance paperwork notice of the proposed new OGE Form 450 (see 60 FR 45722-45723). During the public comment period on that advance notice, OGE received seven requests by persons outside OGE for copies of the proposed new form and two comment letters, both of which were from Federal agencies (the Nuclear Regulatory Commission and the Defense Logistics Agency (DLA)). The two comment letters generally questioned certain aspects of the confidential financial disclosure system, including the underlying OGE regulation codified at 5 CFR part 2634. The comment letters also urged a few specific changes to the wording or concepts of the proposed form. Upon review, OGE has determined not to modify the underlying reporting format nor the proposed form itself (except, as to the form, for a couple of clarifying revisions). In part in response to certain DLA suggestions, the revisions to the proposed form add references in the instructions (on page 2) to the reporting of "401k" plans and clarify that the individual holdings of such plans as well as Individual Retirement Accounts and trusts must generally be reported. The Office of Government Ethics' reasons for not otherwise modifying either the proposed form or the underlying regulation follow.

The Office of Government Ethics has already removed, by FR issuance, the requirement for reporting of Government securities, bank accounts and certain similar items which do not normally present much potential for a conflict of interest. See below for a discussion of this 1993 change, which is not reflected in the existing SF 450, but will be in the proposed OGE Form 450. In addition, in the three years since the

which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

new executive branchwide confidential disclosure system took effect in the fall of 1992, the overall system has worked well according to the agency feedback that OGE has received. This is particularly so since OGE and the agencies have been flexible within the regulatory framework, allowing for appropriate limitations on coverage, exceptions and alternative forms where justified. Further, OGE is committed to a future fundamental reassessment of the basic structure of the confidential disclosure system. For now, though, the redesigned proposed OGE Form 450 represents urgently needed improvements and updates to the existing Standard Form 450 which it will replace.

As noted, once finally approved by OMB and adopted by OGE, the new OGE form will replace the existing SF 450 Executive Branch Personnel Confidential Financial Disclosure Report. The SF 450 collects, as will the future OGE Form 450, information required under OGE's executive branchwide regulatory provisions. See subpart I of 5 CFR part 2634. The new OGE Form 450 will serve, as does the current SF 450, as the uniform report form for collection, on a confidential basis, of financial information required by the OGE regulation from certain new entrant and incumbent employees of the executive branch departments and agencies in order to allow ethics officials to conduct conflict of interest reviews and to resolve any actual or potential conflicts found.

The basis for the OGE regulation and the report form is two-fold. First, section 201(d) of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990) makes OGE responsible for the establishment of a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public disclosure under the Ethics in Government Act of 1978 (the "Ethics Act"), as amended, 5 U.S.C. appendix. Second, section 107(a) of the Ethics Act further provides authority for OGE as the supervising ethics office for the executive branch of the Federal Government to require that appropriate executive agency employees file confidential financial disclosure reports, "in such form as the supervising ethics office may prescribe." The current SF 450, together with the underlying OGE confidential disclosure regulation, both initially adopted in 1992 after appropriate clearances from OMB as well as the General Services Administration (GSA) for the standard form, constitute the form OGE has

prescribed for such confidential financial disclosure in the executive branch. The Office of Government Ethics recently sought and subsequently obtained a limited paperwork renewal from OMB as to the existing SF 450 in order to allow sufficient time for OGE to develop and clear the new OGE Form 450 which is the subject of this notice. See 60 FR 34258-34259 (June 30, 1995). The new OGE form will not require GSA clearance, since it is not a standard (or optional) form under the GSA program. The Office of Government Ethics will provide further information in the future to the agencies and the public about the details of phasing in the new form, once it is finally cleared and adopted, and phasing out the existing standard form.

Since the OGE's financial disclosure regulation at 5 CFR part 2634 and the reporting format were adopted in 1992, there have been certain revisions to each. The most significant of these is the determination of OGE to exclude from general executive branch confidential financial disclosure the reporting of cash accounts in depository institutions (including banks), money market mutual funds and accounts and U.S. Government obligations and securities. See 58 FR 63023-63024 (November 30, 1993). The Office of Government Ethics has directed executive departments and agencies to notify all filers of this change, which is not reflected on the SF 450 itself. The new OGE replacement form will reflect that change, as well as various other changes and improvements in the reporting format, to make it clearer and more user-friendly. A more complete set of instructions for filling out the form is included in the draft OGE Form 450 and helpful examples are set forth on the reporting parts.

The Office of Government Ethics expects that the new form should be ready, after OMB clearance, for dissemination to executive branch departments and agencies early next year. As noted above, the Office of Government Ethics will provide appropriate guidance and phase-in time to departments and agencies once the new form is available. The new form will be made available in paper, on electronic disk and on OGE's electronic bulletin board entitled "The Ethics Bulletin Board System" (TEBBS). In addition, OGE will work on making available a future electronic version of the form, to allow employees the option of preparing it on a computer. The Office of Government Ethics also intends to permit departments and agencies to develop or utilize electronic versions of the form on their own,

provided that they precisely duplicate the paper original to the extent possible.

Since 1992, various agencies have developed, with OGE review/approval, alternative reporting formats, such as certificates of no conflict, for certain classes of employees. Other agencies provide for additional disclosures pursuant to independent organic statutes and in certain other circumstances when authorized by OGE. However, the future OGE Form 450, as successor to the current SF 450, will remain the uniform executive branch report form for most of those executive branch employees who are required by their agencies to report confidentially on their financial interests. The confidential report form is to be filed by each reporting individual with the designated agency ethics official at the executive department or agency where he or she is or will be employed.

Reporting individuals are regular employees whose positions have been designated by their agency as requiring confidential financial disclosure in order to help avoid conflicts with their assigned responsibilities; additionally, all special Government employees (SGEs) are generally required to file. Agencies may, if appropriate under the OGE regulation, exclude certain regular employees or SGEs as provided in 5 CFR 2634.905. Reports are normally required to be filed within 30 days of entering a covered position (or earlier if required by the agency concerned), and again annually if the employee serves for more than 60 days in the position. As indicated in § 2634.907 of the OGE regulation, the information required to be collected includes assets and sources of income, gifts and travel reimbursements, liabilities, employment agreements and arrangements, and outside positions, subject to certain thresholds and exclusions.

Most of the persons who file this report form are current executive branch Government employees at the time they complete the forms. However, some filers are private citizens who are asked by their prospective agency to file a new entrant report prior to entering Government service in order to permit advance checking for any potential conflicts of interest and resolution thereof by agreement to recuse, divest, obtain a waiver, or take other remedial steps. Based on OGE's annual agency ethics questionnaire responses, approximately 285,000 SF 450 report forms were filed during 1994 throughout the executive branch. Of these, OGE estimates that no more than between 5% and 10%, or some 14,250 to 28,500 per year, are filed by private citizens whose agencies require that

they file their new entrant reports prior to assuming Government responsibilities.

Each filing is estimated to take an average of one and one-half hours. The number of private citizens whose reports are filed each year with OGE is less than 10, but pursuant to 5 CFR 1320.3(c)(4)(i), the lower limit for this general regulatory-based requirement is set at 10 private persons (OGE-processed reports). This yields an annual reporting burden of 15 hours, the same as in the current OMB inventory for this information collection. The remainder of the private citizen reports are filed with other departments and agencies throughout the executive branch.

Public comment is again invited on each aspect of the proposed new OGE Form 450 as set forth in this second notice, including specifically views on the need for and practical utility of this proposed modified collection of information, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology). The Office of Government Ethics, in consultation with OMB, will consider all comments received, which will become a matter of public record.

Approved: November 30, 1995.

Donald E. Campbell,

Deputy Director, Office of Government Ethics.
[FR Doc. 95-29723 Filed 12-5-95; 8:45 am]

BILLING CODE 6345-01-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95D-0377]

Advertising and Promotion; Draft Guidances

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing two draft guidance documents entitled "Guidance to Industry on Dissemination of Reprints of Certain Published, Original Data" and "Guidance for Industry Funded Dissemination of Reference Texts." These draft guidances are related to the dissemination, by sponsors of human and animal drugs, medical devices, and biological products, of certain reprints of journal articles discussing FDA-approved

products, and reference texts (medical textbooks and compendia). The draft guidances describe circumstances under which the agency would exercise its discretion to allow the dissemination of these reprints and reference texts to health care professionals.

DATES: Written comments by January 5, 1996.

ADDRESSES: Submit written comments on the draft guidance documents to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, or FAX at 301-594-3215.

FOR FURTHER INFORMATION CONTACT: Ilisa B. G. Bernstein, Office of Policy (HF-23), Food and Drug Administration, 5600 Fishers Lane, rm. 15-74, Rockville, MD 20857, 301-827-3380, or via internet at IBernste@bangate.fda.gov.

SUPPLEMENTARY INFORMATION: Health care professionals have always been able to obtain, from a number of different sources, journal articles and reference texts (i.e., medical textbooks and compendia), that discuss human and animal drugs, medical devices, and biological products. These journal articles and reference texts are commercially available and may be obtained from publishers, libraries, on-line data bases, colleagues, bookstores, companies upon request, or other sources. Sponsors of human and animal drugs, medical devices, and biological products frequently have expressed a desire to disseminate reprints of journal articles and reference texts to health care professionals.

FDA traditionally has taken the position that sponsors who wish to distribute articles and reference texts containing information that is inconsistent with the FDA-approved labeling for a product may be in conflict with the Federal Food, Drug, and Cosmetic Act and implementing regulations. The agency's position is based on its mission to help ensure the safety and efficacy of human and animal drugs, medical devices, and biological products. Sponsors seeking approval or clearance to market these products must demonstrate to FDA that the products are safe and effective for their intended use(s). Permitting sponsors to freely disseminate information that is inconsistent with the FDA-approved or cleared use(s) would diminish the incentive for sponsors to perform the clinical studies which are necessary to verify that the product is safe and effective for the unapproved use. Furthermore, information disseminated by a biased source may have a greater

potential to mislead the health care professional.

FDA believes that journal articles and reference texts are often useful to health care professionals. Accordingly, the agency has reviewed its policies to determine if modifications can be made without jeopardizing the integrity of the statutorily mandated standard that marketed drugs be safe and effective and have adequate directions for their intended use(s). After careful review, the agency is proposing to modify two of its policies at this time.

First, under one proposed draft guidance, the agency would allow sponsors to disseminate, under certain circumstances, journal articles that report the results of well-controlled studies, provided they represent the peer-reviewed, published version of original efficacy trials used to support approval, licensure, or clearance. Second, under the other proposed draft guidance, the agency would allow sponsors to disseminate, under certain circumstances, reference texts that discuss human or animal drugs, medical devices, or biological products. FDA has prepared two draft guidance documents describing the proposed circumstances under which the agency would exercise its discretion regarding the dissemination of these materials by sponsors.

FDA is particularly interested in receiving comments on whether the reprints discussed in the "Guidance to Industry on Dissemination of Reprints of Certain Published, Original Data" should be from "peer-reviewed" journals. If so, please comment on what constitutes a "peer-reviewed" journal and what benefits would be afforded if these reprints are from "peer-reviewed" journals.

Interested persons may, on or before January 5, 1996, submit to the Dockets Management Branch (address and FAX number above) written comments on the draft guidance documents. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance documents and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The texts of the draft guidance documents follow:

Guidance to Industry on Dissemination of Reprints of Certain Published, Original Data¹

I. Purpose of Guidance

Sponsors frequently want to disseminate reprints of articles reporting the results of the effectiveness trials that have been relied on by FDA in its approval or clearance of a drug, device, or biologic product. However, such articles may contain effectiveness rates, data, analyses, uses, regimens, or other information that is different from the approved labeling, and might, if disseminated by the sponsor, be considered violative promotional activities.

Nonetheless, the agency intends to allow the dissemination of reprints of articles that represent the peer-reviewed, published version of original efficacy trials, under the circumstances described in section II. below.

II. Circumstances for Dissemination of Certain Journal Articles Discussing FDA-Approved Products

1. The principal subject of the article should be the use(s) or indication(s) that has been approved by FDA. The article should be published in accordance with the regular peer-review procedure of the journal in which it is published, and the article reports the original study that was represented by the sponsor, submitted to FDA, and accepted by the agency as one of the adequate and well controlled studies providing evidence of effectiveness. In the case of a medical device, this guidance also applies to studies that were otherwise represented by the sponsor, submitted to the agency, and accepted by the agency as valid and material evidence of safety or effectiveness in lieu of adequate and well controlled studies;

2. The reprint should be from a bona fide peer-reviewed journal. A bona fide peer-reviewed journal is a journal that utilizes experts to review and objectively select, reject, or provide comments about proposed articles. Such experts should have demonstrated expertise in the subject of the article under review, and be independent from the journal;

3. If the article contains effectiveness rates, data, analyses, uses, regimens, or other information that is different from approved labeling, the reprint should prominently state the difference(s), with specificity, on the face of the reprint. One acceptable means of achieving the appropriate prominence for this statement is to permanently affix to the reprint a sticker stating the differences; and

4. The reprint should disclose all material

¹This guidance does not apply to reprints of articles that discuss the specific prohibited uses of animal drugs listed in the FDA, Center for Veterinary Medicine Compliance Policy Guide 7125.06 or the Animal Medicinal Drug Use Clarification Act implementing regulations. Although this guidance does not create or confer any rights on any person and does not operate to bind FDA in any way, it does represent the agency's current thinking on the dissemination of reprints of certain published, original data. The agency will consider individual circumstances on a case-by-case basis.

Guidance for Industry Funded Dissemination of Reference Texts²

I. Purpose of Guidance

Sponsors have also expressed a desire to disseminate reference texts, i.e., medical textbooks and compendia, to health care professionals. These texts typically discuss a wide range of medical diagnoses and treatments, including drug product utilization, surgical techniques, and other medical topics. FDA recognizes that such texts are often useful to clinicians in the practice of medicine.

Reference texts often contain information about the use of drugs, devices, or biologic products in the treatment, diagnosis, or prevention of disease that may not be consistent with the FDA-approved labeling for the products (e.g., discussion of unapproved uses). FDA recognizes, however, that many textbooks do not necessarily highlight a particular drug or device manufacturers products. In such instances, industry's desire to disseminate these reference texts may be in conflict with the Federal Food, Drug, and Cosmetic Act (the act) and implementing regulations.³

Nonetheless, FDA intends to permit the distribution of sound, authoritative materials that are written, published, and disseminated independent of the commercial interest of a sponsoring company and are not false nor misleading. FDA, therefore, intends to allow the dissemination by sponsors of reference texts that discuss human or animal drug, device, or biologic products, under the circumstances described in section II. below.

II. Circumstances for Dissemination of Reference Textbooks

1. The reference text should not have been written, edited, excerpted, or published specifically for, or at the request of, a drug, device, or biologic firm (see discussion below);

2. The content of the reference text should not have been reviewed, edited, or significantly influenced by a drug, device, or biologic firm, or agent thereof (see discussion below);

3. The reference text should not be distributed only or primarily through drug, device, or biologic firms (e.g., it should be

²Although this guidance does not create or confer any rights, on any person, and does not operate to bind FDA in any way, it does represent the agency's current thinking on industry funded dissemination of reference texts. Although FDA believes that this guidance encompasses the vast majority of reference texts, the agency will consider, on a case-by-case basis, reference texts that do not fall within the parameters of this guidance document. This guidance does not apply to textbooks or compendia that discuss the specific prohibited uses or animal drugs listed in the Center for Veterinary Medicine Compliance Policy Guide 7125.06 or the Animal Medicinal Drug Use Clarification Act implementing regulations.

³Printed materials, such as medical textbooks and compendia, which supplement, explain, or are textually related to a regulated product are considered labeling for that product when disseminated by or on behalf of the manufacturer, packer, or distributor of the product. See section 201(m) of the act (21 U.S.C. 321(m)) and *Kordel v. United States*, 338 U.S. 345, 350 (1948).

other distribution channels where similar books are normally available);

4. The reference text should not focus primarily on any particular drug(s), device(s), or biologic(s) of the disseminating company, nor should it have a significant focus on unapproved uses of the drug(s), device(s), or biologic(s) marketed or under investigation by the firm supporting the dissemination of the text; and

5. Specific product information (other than the approved package insert) should not be physically appended to the reference text.

The agency recognizes that there are some useful reference texts that are written, edited, or published by a sponsor or agent of the sponsor. In these instances, FDA intends to allow the distribution of a reference text under the circumstances described in paragraphs 3 through 5 above, when the authorship, editing, and publishing of the reference text results in the presentation of a balanced perspective of the subject matter. Typically, this would be evidenced by an authorship and editorial process that fosters input from a relatively wide spectrum of sources and that allows for information from all sources to be considered.

Dated: November 30, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95-29663 Filed 12-1-95; 1:21 pm]

BILLING CODE 4160-01-F

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel
Date: December 5, 1995.

Time: 3 p.m.

Place: Parklawn Building, Room 9C-18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C-18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel
Date: December 11, 1995.

Time: 1:30 p.m.

Place: Parklawn Building, Room 9C-18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Michael D. Hirsch, Parklawn Building, Room 9C-18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-1000.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 14, 1995.

Time: 1:30 p.m.

Place: Parklawn Building, Room 9C-18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Angela L. Redlingshafer, Parklawn Building, Room 9C-18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-1367.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: December 4, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95-29874 Filed 12-4-95; 1:41 pm]

BILLING CODE 4140-01-M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Services.

Date: December 13, 1995.

Time: 12:30 p.m.

Place: NIH, Rockledge 2, Room 5198, Telephone Conference.

Contact Person: Dr. Peggy McCardle, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435-1258.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: December 20, 1995.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4142, Telephone Conference.

Contact Person: Dr. Edmund Copeland, Scientific Review Administrator, 6701

Rockledge Drive, Room 4142, Bethesda, Maryland 20892, (301) 435-1715.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 4, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95-29873 Filed 12-5-95; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-066-96-1300-00; CACA-20139 and CACA-22901]

Proposed Sand and Gravel Mining Operation in Soledad Canyon, Los Angeles County, CA

AGENCY: Bureau of Land Management, Department of the Interior, Palm Springs-South Coast Resource Area, Desert District, California.

ACTION: Notice of Intent to prepare an Environmental Impact Statement—Second Notice.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and 40 CFR 1508.22, notice is hereby given that the Bureau of Land Management (BLM) will prepare an Environmental Impact Statement (EIS) for the Transit Mixed Concrete (TMC) Surface Mining Project (Project) proposed for construction and operation in Soledad Canyon, Los Angeles County, California. TMC acquired the rights to develop the Project through a competitive bid process. The BLM granted the mineral material contract to TMC in March 1990. The BLM complied with NEPA for the sale of sand and gravel for the Project site by preparing an Environmental Assessment (EA) and issuing a Finding of No Significant Impact (FONSI) in 1989.

The Project plans to mine a total of 83 million tons of materials and sell

approximately 56 million tons of sand and gravel, also known as Portland cement concrete sand and gravel (PCC aggregates), over a 20-year period to fulfill contracts entered into with the BLM.

The Project includes plans to operate a concrete batch plant to produce and deliver ready-mixed concrete to the local market. All proposed mining and operations will be located north of Soledad Canyon Road and the Santa Clara River. The 500-acre site represents one of the westernmost reserves for PCC aggregate production in the Saugus-Newhall Production-Consumption Region that is located outside the floodplain of the Santa Clara River or a tributary wash.

The general mining plan is to mine on the south side of the ridge through a series of four excavation cuts. Each cut will progress from a higher elevation and proceed downslope. Fill areas for excess natural fines will be established on both the south and north sides of the ridge. Reclamation will be concurrent with mining operations and measures have been incorporated into Project design to minimize erosion, provide watershed control, and protect water quality in the Santa Clara River. A full range of alternatives to the proposed action will be considered in the EIS.

SUPPLEMENTARY INFORMATION: The Project site is on "split-estate" lands where the surface is privately owned and the minerals are federally owned and administered by the BLM. The project is subject to approval of a Surface Mining Permit and environmental analysis in accordance with the California Environmental Quality Act (CEQA). The County of Los Angeles is the Lead Agency for preparation of an Environmental Impact Report (EIR) which will be prepared separate from the EIS.

Comments from members of the public are being requested to help identify significant issues or concerns related to the proposed action to determine the scope of the issues and alternatives that need to be analyzed, and to identify and eliminate from detailed study the issues that are not significant. All comments recommending that the EIS address specific environmental issues should contain supporting documentation and rationale.

A Notice of Intent announcing BLM's intent to prepare an Environmental Impact Statement for the proposed project, was previously published in the Federal Register October 16, 1995. The public comment period closed November 15, 1995. Per public request,

the comment period for the Notice of Intent has been extended another 30-days. Comments submitted during the previous public comment period will be considered.

DATES: Written comments must be submitted no later than January 5, 1996 to the following address: Ms. Julia Dougan, Area Manager, Bureau of Land Management, Palm Springs—South Coast Resource Area Office, P.O. Box 2000, North Palm Springs, California, 92258-2000.

FOR ADDITIONAL INFORMATION CONTACT: Ms. Patty Cook, BLM, Palm Springs—South Coast Resource Area, P.O. Box 2000, North Palm Springs, CA 92258-2000, telephone 619-251-4853.

Dated: November 29, 1995.

Julia Dougan,
Area Manager.

[FR Doc. 95-29662 Filed 12-5-95; 8:45 am]

BILLING CODE 4310-40-P

[AZ-024-06-1430-01; AZA-29177]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: The notice of realty action published on Friday, July 7, 1995, in Federal Register document 60-130, page 35420 is corrected as follows:

1. Page 35420, 2nd Column, Line 10, "Maricopa County" should read, "Pinal County".

2. Page 35420, 2nd Column, Line 24, "Sec. 19, lots 2, 3, 4, and E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$," should read, Sec. 19, lots 2, 3, 4 and E $\frac{1}{2}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$,"

FOR FURTHER INFORMATION CONTACT: Vivian Reid, Land Law Examiner, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 780-8090.

Dated: November 28, 1995.

Gail Acheson,
Acting District Manager.

[FR Doc. 95-29682 Filed 12-5-95; 8:45 am]

BILLING CODE 4310-32-P

[AZ-054-06-1430-00; AZA 29306]

Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Mohave County, Arizona have been examined and found suitable for

classification for lease or conveyance to Mohave County Board of Supervisors under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). Mohave County Board of Supervisors proposes to use the lands for an educational and residential treatment youth center.

Gila and Salt River Meridian, Arizona

T. 16 N., R. 19 W.,

Sec. 16, SE $\frac{1}{4}$.

The area contains 11.25 acres.

The lands are not needed for Federal purposes. Lease or Conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Yuma District, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona. Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

DATES: For a period of 45 days from the date of issuance of this notice in the Federal Register, interested persons may submit comments regarding the proposed lease or conveyance of the lands to the Area Manager, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, AZ 86406.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the lands for an educational and treatment youth center. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the

future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for an educational and residential treatment youth center. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Janice Easley, Land Law Examiner, Bureau of Land Management, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406. Detailed information concerning this action is also available for review.

Dated: November 24, 1995.

Robert M. Henderson,

Acting Area Manager.

[FR Doc. 95-29681 Filed 12-5-95; 8:45 am]

BILLING CODE 4310-32-P

Minerals Management Service

Outer Continental Shelf, Gulf of Mexico Region, Proposed Central and Western Gulf Sales 157 and 161

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement Regarding Proposed Central and Western Gulf of Mexico Sales 157 and 161.

The Minerals Management Service has prepared a final environmental impact statement (EIS) relating to proposed 1996 Outer Continental Shelf oil and gas lease sales in the Central and Western Gulf of Mexico. The proposed Central Gulf Sale 157 will offer for lease approximately 31.2 million unleased acres, and the Western Gulf Sale 161 will offer approximately 28.3 million unleased acres. Single copies of the EIS can be obtained from the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Unit (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123-2394.

Copies of the draft EIS will also be available for review by the public in the following libraries:

TEXAS

Alma M. Carpenter Public Library, 330 South Ann, Sourlake
 Aransas Pass Public Library, 110 North Lamont Street, Aransas Pass
 Austin Public Library, 402 West Ninth Street, Austin
 Bay City Public Library, 1900 Fifth Street, Bay City
 Brazoria County Library, 410 Brazoport Boulevard, Freeport
 Calhoun County Library, 301 South Ann, Port Lavaca
 Chambers County Library System, 202 Cummings Street, Anahuac
 Comfort Public Library, Seventh & High Streets, Comfort
 Corpus Christi Central Library, 805 Comanche Street, Corpus Christi
 Dallas Public Library, 1513 Young Street, Dallas
 Houston Public Library, 500 McKinney Street, Houston
 Jackson County Library, 411 North Wells Street, Edna
 Lamar University, Gray Library, Virginia Avenue, Beaumont
 LaRatama Library, 505 Mesquite Street, Corpus Christi
 Liberty Municipal Library, 1710 Sam Houston Avenue, Liberty
 Orange Public Library, 220 North Fifth Street, Orange
 Port Arthur Public Library, 3601 Cultural Center Drive, Port Arthur
 Port Isabel Public Library, 213 Yturria Street, Port Isabel
 Reber Memorial Library, 193 North Fourth, Raymondville
 Refugio County Public Library, 815 South Commerce Street, Refugio
 Rice University, Fondren Library, 6100 South Main Street, Houston
 R. J. Kleberg Public Library, Fourth and Henrietta, Kingsville
 Rockwall County Library, 108 South Fannin Street, Rockwall
 Rosenberg Library, 2310 Sealy Street, Galveston
 Sam Houston Regional Library & Research Center, FM 1011 Governors Road, Liberty
 Texas A & M University, Corpus Christi Library, 6300 Ocean Drive, Corpus Christi
 Texas A & M University, Evans Library, Spence and Lubbock Streets, College Station
 Texas Southmost College Library, 1825 May Street, Brownsville
 Texas State Library, 1200 Brazos Street, Austin
 University of Houston Library, 4800 Calhoun Boulevard, Houston
 University of Texas at Brownsville, Arnulfo Oliveria Memorial Library, 80 Fort Brown, Brownsville
 University of Texas Law School, Tarlton Law Library, 727 East 26th Street, Austin

University of Texas, LBJ School of Public Affairs Library, 2313 Red River Street, Austin
 University of Texas Library, 21st and Speedway Streets, Austin
 Victoria Public Library, 320 North Main, Victoria

LOUISIANA

Calcasieu Parish Library, 327 Broad Street, Lake Charles
 Cameron Parish Library, Marshall Street, Cameron
 Grand Isle Branch Library, Highway 1, Grand Isle
 Government Documents Library, Loyola University, 6363 St. Charles Avenue, New Orleans
 Iberville Parish Library, 24605 J. Gerald Berret Boulevard, Plaquemine
 Jefferson Parish Lobby Branch Library, 3410 North Causeway Boulevard, Metairie
 Jefferson Parish West Bank Outreach Branch Library, 2751 Manhattan Boulevard, Harvey
 Louisiana State University Library, 760 Riverside Road, Baton Rouge
 Lafayette Public Library, 301 W. Congress Street, Lafayette
 Lafitte Branch Library, Route 1, Box 2, Lafitte
 Lafourche Parish Library, 303 West 5th Street, Thibodaux
 Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston
 LUMCON Library, Star Route 541, Chauvin
 McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles
 New Orleans Public Library, 219 Loyola Avenue, New Orleans
 Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux
 Plaquemine Parish Library, 203 Highway 11, South, Buras
 St. Bernard Parish Library, 1125 East St. Bernard Highway, Chalmette
 St. Charles Parish Library, 105 Lakewood Drive, Luling
 St. John The Baptist Parish Library, 1334 West Airline Highway, Laplace
 St. Mary Parish Library, 206 Iberia Street, Franklin
 St. Tammany Parish Library, Covington Branch, 310 West 21st Street, Covington
 St. Tammany Parish Library, Slidell Branch, 555 Robert Boulevard, Slidell
 Terrebonne Parish Library, 424 Roussell Street, Houma
 Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans
 University of New Orleans Library, Lakeshore Drive, New Orleans
 University of Southwestern LA, Dupre Library, 302 East St. Mary Boulevard, Lafayette

Vermillion Parish Library, Abbeville Branch, 200 North Street, Abbeville

MISSISSIPPI

Gulf Coast Research Laboratory, Gunter Library, 703 East Beach Drive, Ocean Springs
 Hancock County Library System, 312 Highway 90, Bay Saint Louis
 Harrison County Library, 14th and 21st Avenues, Gulfport
 Jackson George Regional Library System, 3214 Pascagoula Street, Pascagoula

ALABAMA

Dauphin Island Sea Lab, Marine Environmental Science Consortium, Library, Bienville Boulevard, Dauphin Island
 Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores
 Mobile Public Library, 701 Government Street, Mobile
 Montgomery Public Library, 445 South Lawrence Street, Montgomery
 Thomas B. Norton Public Library, 221 West 19th Avenue, Gulf Shores
 University of South Alabama, University Boulevard, Mobile

FLORIDA

Bay County Public Library, 25 West Government Street, Panama City
 Florida A & M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee
 Florida Northwest Regional Library System, 25 West Government Street, Panama City
 Florida State University, Strozier Library, Call Street and Copeland Avenue, Tallahassee
 Fort Walton Beach Public Library, 105 Miracle Strip Parkway, Fort Walton Beach
 Leon County Public Library, 200 West Park Avenue, Tallahassee
 University of Florida Library, University Avenue, Gainesville
 University of Florida, Holland Law Center Library, Southwest 25th Street and 2nd Avenue, Gainesville
 West Florida Regional Library, 200 West Gregory Street, Pensacola

Dated: November 3, 1995.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 95-29625 Filed 12-5-95; 8:45 am]

BILLING CODE 4310-MR-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-739 (Preliminary)]

Clad Steel Plate From Japan

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of clad steel plate, provided for in subheading 7210.90.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 29, 1995, a petition was filed with the Commission and the Department of Commerce by Lukens Steel Company, Coatesville, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of clad steel plate from Japan. Accordingly, effective September 29, 1995, the Commission instituted antidumping investigation No. 731-TA-739 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of October 10, 1995 (60 F.R. 52688). The conference was held in Washington, DC, on October 20, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 13, 1995. The views of the Commission are contained in USITC Publication 2936 (November 1995), entitled "Clad Steel Plate from Japan: Investigation No. 731-TA-739 (Preliminary)."

By order of the Commission.

Issued: November 20, 1995.

Donna R. Koehnke,
Secretary.

[FR Doc. 95-29701 Filed 12-5-95; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-No. 35)]

Intrastate Rail Rate Authority—West Virginia

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional recertification.

SUMMARY: The State of West Virginia has filed an application for recertification. The Commission, under *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680, 685 (1989) (*Authority*), provisionally recertifies the State of West Virginia to regulate intrastate rail rates, classifications, rules, and practices. After its review, the Commission will issue a recertification decision or take other appropriate action.

DATES: This provisional recertification was effective on the date the application for recertification was filed with the Commission. Authority at 685.

FOR FURTHER INFORMATION CONTACT: Elaine Sehart-Green, (202) 927-5269 or Beryl Gordon, (202) 927-5610. [TDD for the hearing impaired: (202) 927-5721.]

Decided: November 28, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 95-29693 Filed 12-5-95; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Auto Body Consortium 2

Notice is hereby given that, on September 18, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Auto Body Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the partnership. The notifications were filed for the purpose of limiting recovery of plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Alcan Rolled Products Co., Farmington Hills, MI; Alcoa, Alcoa Center, PA; Allen-Bradley Co., Troy, MI; Auto Body Consortium, Inc., Ann Arbor,

MI; Bethlehem Steel Corporation, Southfield, MI; Chrysler Corporation, Auburn Hills, MI; Computer Integrated Welding, Inc., Auburn Hills, MI; Detroit Center Tool, Detroit, MI; Dupont Central Research and Development, Wilmington, DE; Ford Motor Co., Dearborn, MI; General Motors Corporation, Pontiac, MI; Gressel Tool Company, Fraser, MI; Helm Instrument Co., Inc., Maumee, OH; Johnson Controls, Inc., Plymouth, MI; Lamb Technicon, Warren, MI; Medar, Inc., Farmington Hills, MI; Progressive Tool and Industries, Southfield, MI; Robotron Corporation, Southfield, MI; Sensotech, Columbus, OH; Square D, Troy, MI; and Tower Automotive, Farmington Hills, MI.

The purpose of this joint venture is to develop and demonstrate intelligent resistance welding technologies and systems to improve the quality and consistency of resistance welding focusing on advanced automotive materials including conventional steels, coated steels and aluminum. The activities of the joint venture will be partially funded by an award from the Advanced Institute of Standards and Technology, Department of Commerce. Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95-29670 Filed 12-5-95; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Low Cost Flip Chip Consortium

Notice is hereby given that, on August 30, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Low Cost Flip Chip Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the Consortium. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: National Semiconductor Corporation, Santa Clara, CA; Aptos Corporation, Milpitas, CA; Delco Electronics Corporation, Kokomo, IN; Hughes Missile Systems Company, Tucson, AZ; Jabil Circuit, Inc., San Jose, CA; Litronic Industries, Costa Mesa, CA; Sheldahl, Inc., Northfield, MN; and SunDisk Corporation, Santa Clara, CA.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

The purpose of the Consortium is to advance the technology and enhance the United States production capabilities of the flip-chip Direct Chip Attach assembly for integrated microcircuits with the goal of promoting both military and commercial customers to employ flip-chip assembled integrated circuits in a wide variety of applications.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95-29671 Filed 12-5-95; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—FED Joint Venture

Notice is hereby given that, on July 28, 1995, and September 8, 1995, respectively, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the FED Joint Venture has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the Joint Venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Analog Devices, Greensboro, NC; BFGoodrich Avionics Systems, Columbus, OH; Cetek Technologies, Inc., Poughkeepsie, NY; InfilMed, Inc., Liverpool, NY; and Kaiser Electronics, San Jose, CA.

The purpose of the FED Joint Venture is to develop the technology and its commercialization under the NIST Advanced Technology Program to develop high performance video displays.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95-29672 Filed 12-5-95; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Compact Heat Pump Based Microchannel and Tangential Fan Technologies

Notice is hereby given that, on September 18, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Compact Heat Pump Based Microchannel and Tangential Fan Technologies (the "Joint Venture") has

filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing the identities of the parties and the nature and objectives of the joint venture.

The notices were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the joint venture are: Lennox Industries Inc., Richardson, TX; Emerson Electric Co., St. Louis, MO; and Heatcraft Inc., Grenada, MS. The purpose of the joint venture is to engage in cooperative research and development of heat pump technology that could result in units that would be forty (40) percent smaller and four (4) times quieter than current units, while also requiring thirty (30) percent less refrigerant. The activities of this joint venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95-29673 Filed 12-5-95; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Catalyst System Consortium

Notice is hereby given that, on September 21, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), The B.F. Goodrich Company filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to a research and development venture and (2) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: The B.F. Goodrich Company, Akron, OH; and Minnesota Mining and Manufacturing Company, St. Paul, MN. The objectives of the venture are to develop (a) a new catalyst system for the synthesis of cyclic olefin polymers which are both tough and optically transparent and (b) an innovative technology for fabricating optical components such as the flat-panel displays. In addition to optical

applications, the new polymers might be also useful in insulation for electronics.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95-29674 Filed 12-5-95; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Continuous Biocatalytic Systems for the Production of Chemicals From Renewable Resources

Notice is hereby given that, on September 15, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Genencor International, Inc. filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the joint venture are Genencor International, Inc., Rochester, NY; Eastman Chemical Company, Kingsport, TN; ElectroSynthesis Company, Inc., Lancaster, NY; MicroGenomics, Inc., Somerville, NJ; and Argonne National laboratory, Argonne, IL. The objective of the joint venture is to explore economically viable biocatalytic systems for the production of various chemicals from renewable agricultural resources, including corn and other carbohydrate-rich plant materials. The biocatalytic systems are intended to be continuous as opposed to the more costly batch mode currently employed in biocatalysis, significantly reducing the amount of time required to achieve competitive process economics. If successful, the project could result in reducing the nation's reliance on imported petroleum and benefiting the U.S. chemical and chemical-consuming industries.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95-29675 Filed 12-5-95; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on August 18, 1995, pursuant to Section 6(a) of the

National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Financial Services Technology Consortium, Inc. (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following party has been admitted as a Principal Member of the Consortium: Glenview State Bank, Glenview, IL. The following parties were admitted as Associate Members of the Consortium: Tandem Computers Inc., Cupertino, CA; First Virtual Holdings, Inc., San Diego, CA; IRE, Inc., Baltimore, MD; InfoStructure Services & Technology, Inc., Ames, IA; Hewlett Packard Company, Cupertino, CA; CUNA & Affiliates, Madison, WI; GTE Government Systems Corporation, Needham, MA; and Ford Motor Credit Co., Dearborn, MI. The following parties were admitted as Advisory Members of the Consortium: Northeast Parallel Architectures Center, Syracuse, NY; Bank Administration Institute, Chicago, IL; American Bankers Association, Washington, DC; and the MITRE Corporation, McLean, VA. The following party has terminated its membership in the Consortium: Columbia University, New York, NY.

No other changes have been made in either the membership or planned activity of the Consortium. Membership remains open, and the Consortium intends to file additional written notifications disclosing all changes in membership.

On October 21, 1993, the Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on June 15, 1995. A notice for this filing has not yet been published in the Federal Register.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 95-29676 Filed 12-5-95; 8:45 am]
BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on August 18, 1995, pursuant to Section 6(a) of the

National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), National Center for Manufacturing Sciences, Inc. ("NCMS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies were recently accepted as active members of NCMS: D.H. Brown Associates, Port Chester, NY; Electrosource, Inc., San Marcos, TX; Expansion Programs International, Inc., Cleveland, OH; GenRad, Inc., Concord, MA; Indium Corporation of America, Utica, NY; Laser Fare, Inc., Narragansoff, RI; Manufacturing Control Associates, Inc., Palatine, IL; The Monarch Machine Tool Company, Sidney, OH; Progressive Technologies, Inc., Grand Rapids, MI; SILMA Incorporated, Cupertino, CA; and Chrysler Corporation, Highland Park, MI. In addition, the following companies were recently accepted as affiliate members of NCMS: American Foundryman's Society, Des Plaines, IL; Michigan Biotechnology Institute, Lansing, MI; and Surface Science Western (SSW), London, Ontario, CANADA. The following companies recently resigned from active membership in NCMS: Quad Systems Corporation, Horsham, PA; Technology Assessment & Transfer, Inc., Annapolis, MD; and University Science Partners, Inc., Ann Arbor, MI. The University of Detroit Mercy recently resigned from affiliate membership in NCMS.

No other changes have been made in either the membership or planned activities of NCMS. Membership in NCMS remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on July 25, 1995. This notice has not yet been published in the Federal Register.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 95-29677 Filed 12-5-95; 8:45 am]
BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Blue Band Consortium

Notice is hereby given that, on July 31, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), The Blue Band Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Advanced Technology Materials, Inc., Danbury, CT; American Crystal Technology, Inc., Dublin, OH; Boston University, Boston, MA; Hewlett Packard Company, Palo Alto, CA; SDL, Inc., San Jose, CA; The University of Texas at Austin, Austin, TX; and Xerox Corporation, Palo Alto, CA. The objective of the venture is the rapid commercialization of optoelectronic components operating in the green, blue and ultraviolet portion of the optical spectrum.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 95-29678 Filed 12-5-95; 8:45 am]
BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The ATM Forum

Notice is hereby given that, on November 6, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), The ATM Forum (the "ATM Forum") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of ATM Forum are: Data Connection, Ltd., Middlesex, UNITED KINGDOM; Dialogic, Parsippany, NJ; LANOptics, Nigdal, ISRAEL; Spectran Specialty Optics Co., Avon, CT; and Zenith Electronics Corp., Glenview, IL. The following company is no longer a member: Centillion Networks.

No changes have been made in the planned activities of ATM Forum. Membership remains open, and the members intend to file additional written notifications disclosing all changes in membership.

On April 19, 1993, ATM Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on August 8, 1995. A notice has not yet been published in the Federal Register.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95-29679 Filed 12-5-95; 8:45am]

BILLING CODE 4410-01-M

Information Collection Under Review

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" from the date listed at the top of this page in the Federal Register. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

This collection covers:

(1) Type of Information Collection: Revision of a Currently Approved Collection

(2) The title of the form/collection; Supplement on "Police Use of Force" to the National Crime Victimization Survey (NCVS)

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection; Form number: None. Sponsored by the Bureau of Justice Statistics, United States Department of Justice.

(4) Who will be asked or required to respond, as well as a brief abstract; Primary: Individuals or households. This data collection will be only a pretest for the purpose of ascertaining the feasibility and cost of learning about use of force by law enforcement officers through interviews with an existing random sample of household members. If the pretest shows this method is feasible and cost-effective, data to be collected via the NCVS will be only one of several data collection activities that will be sponsored by the Bureau of Justice Statistics in response to a requirement for an annual statistical report as set forth in section 210402 of the Violent Crime Control and Law Enforcement Act of 1994. The draft of the supplement which is being submitted for review will be asked of all surveyed participants, whether or not they believe they have been the victim of a crime, and will begin by inquiring about any contacts with police officers on official duty during the previous year. The data collection will, consequently, obtain information about contacts such as police providing

information to citizens, as well as incidents in which police arrested the respondent or threatened to use or used physical force on the respondent. Because one purpose of the pretest is to obtain accurate estimates of the percentage of respondents who will answer more than the lead-in screener questions on this supplement, and the burden on such respondents, comments are specifically invited at this time on issues of the clarity and adequacy of the wording of the questions as drafted for exploring issues related to police use of force. Copies of the draft data collection instrument named in (2) above are available for review by writing to Dr. Chaiken or Mr. Briggs at the addresses shown above. The Bureau of Justice Statistics uses information it collects in published reports, and for the U.S. Congress, the Executive Office of the President, practitioners, researchers, and others in the criminal justice community. In the case of this pretest, the results will be used primarily in determining whether or not to design and undertake data collection through the NCVS on the topic of police use of force, and if so to design the final data collection instrument.

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; and 12,000 respondents for the pretest during the period April 1996 to July 1996, of whom 11,400 are estimated to be eligible for the lead-in screening questions only (0.0167 hours or 1 minute) and 600 will require 0.167 hours, or 10 minutes.

(5) An estimate of the total public burden (in hours) associated with the collection. 290 burden hours for the pretest.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhanced the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. e.g., permitting electronic submission of responses.

If you have additional comments or suggestions, please include them with your written response. If a copy of the proposed collection instrument with instructions is not published in this notice please contact the agency representative list below if you wish to receive a copy. Contact: Mr. Lawrence

A. Greenfield, Telephone: 202-616-3281. Bureau of Justice Statistics, United States Department of Justice, Room 1012, 633 Indiana Avenue, NW, Washington, DC 20531.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Dr. Jan M. Chaiken, Director, Bureau of Justice Statistics, 633 Indiana Avenue NW, Washington, DC 20531 or call 202-307-0765.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Systems Policy Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95-29650 Filed 12-5-95; 8:45 am]

BILLING CODE 4410-18-M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 as Amended

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Western Publishing Company, Inc., et al.*, 94-CV-1247 (CGC/DNH), was lodged on November 28, 1995, with the United States District Court for the Northern District of New York. The decree resolves claims of the United States against defendant I.S.A. In New Jersey, Inc. ("I.S.A.") in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at the Hertel Landfill Superfund Site in the Town of Plattekill, Ulster County, New York (the "Site"). In the proposed consent decree, the defendant agrees to pay the United States \$190,000 in settlement of the United States' claims for past response costs incurred by the Environmental Protection Agency at the Site and \$30,000 in settlement of the United States' claims for civil penalties and damages for I.S.A.'s failure or refusal to comply with a unilateral administrative order issued to it by EPA pursuant to section 106 of CERCLA, 42 U.S.C. 9606. The payments will be made from an escrow account as noted below.

In 1991, I.S.A. and other entities and individuals were indicted by a grand

jury empaneled in the United States District Court for the Southern District of New York on numerous federal felony charges. According to a subsequent plea agreement, I.S.A. and other entities were required to be sold to unrelated third parties. In 1994, the United States entered into an Agreement and Covenant Not To Sue under CERCLA with Browning-Ferris Industries of New York, Inc.; Browning-Ferris Industries of Peterson N.J., Inc.; and Browning-Ferris Industries of South Jersey, Inc. (collectively referred to as "BFI") regarding BFI's prospective purchase of the assets of I.S.A. and the other entities. In exchange for this Agreement and covenant Not To Sue, BFI paid \$250,000 to the United States, from which \$55,000 was paid toward past response costs incurred by EPA at the Hertel Site. Upon the sale of the assets of I.S.A. and the other entities, I.S.A. and the other entities paid \$1,000,000 of the sale price into an escrow account to be used to resolve certain liability to the United States pursuant to CERCLA at several sites, including the Hertel Superfund Site, the Warwick Superfund Site in the Town of Warwick, New York, the Ramapo Superfund Site in the Town of Ramapo, New York, and the Kin-Buc Superfund Site in Edison, New Jersey. The balance of the proceeds of BFI's purchase of the assets of I.S.A. and the other entities has been used to satisfy a \$5,000,000 criminal fine, \$3,500,000 in federal and state tax liability, and \$300,000 of liabilities to other creditors.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Western Publishing Company, Inc., et al.*, DOJ Ref. Number 90-11-2-767A.

The proposed consent decree may be examined at the Office of the United States Attorney, United States Courthouse, 445 Broadway, Albany, NY 12207; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, NY 10278; and the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$5.25 (25 cents per page

reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95-29680 Filed 12-5-95; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

National Skill Standards Board; Notice of Opening Meeting

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the Goals 2000: Educate America Act of 1994, Title V, Pub. L. 103-227. The 28-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education and other key groups.

TIME AND PLACE: The meeting will be held from 8 a.m. to approximately 4:30 p.m. on Thursday, January 11, 1996, in the Arlington/Monticello Room, 2nd Floor of the Madison Hotel at 15th & M Streets N.W., Washington, D.C.

AGENDA: The agenda for the Board Meeting will include presentations on Existing Occupational Classification Systems, Skill Standards Initiatives in the States and discussion of upcoming National Skill Standards Board Public Hearings.

PUBLIC PARTICIPATION: The meeting from 8 a.m. to 4:30 p.m., is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact Ed Rugenstein at (301) 495-1591, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Ed Rugenstein at (301) 495-1591.

Signed at Washington, D.C., this 30th day of November, 1995.

Judy Gray,

Executive Director, National Skill Standards Board.

[FR Doc. 95-29751 Filed 12-5-95; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95108]

National Environmental Policy Act; International Space Station

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of Tier 2 draft environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1508), and NASA policy and procedures (14 CFR part 1216, Subpart 1216.3), NASA has prepared and issued a Tier 2 draft environmental impact statement (DEIS) for the International Space Station (ISS). The proposed action by NASA is to continue to provide U.S. participation in the assembly and operation of the ISS. This Tier 2 DEIS addresses changes to the Space Station Program and potential environmental impacts that could not be addressed in detail at the time of the Tier 1 final environmental impact statement (FEIS). These factors include modifications to the Space Station itself, its assembly and operation, and an assessment of the probability and consequences of reentry into Earth's atmosphere.

DATE: Comments on the Tier 2 DEIS must be submitted in writing to NASA on or before January 22, 1996, or 45 days from the date of publication in the Federal Register of the U.S. Environmental Protection Agency's notice of availability of the ISS Tier 2 DEIS.

ADDRESSES: Written comments should be addressed to Mr. David Rusczyk, NASA Johnson Space Center, Code OF, Houston, Texas, 77058-3696. The Tier 2 DEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E street SW, Washington DC 20546.

(b) NASA, Johnson Space Center, Building 111, Industry Assistance Office, Houston, TX 77058.

(c) Spaceport U.S.A., Room 2001, John F. Kennedy Space Center, FL 32899. Please call Lisa Fowler beforehand at 407-867-2468 so that arrangements can be made.

In addition, the Tier 2 DEIS may be reviewed at the following NASA locations by contracting the pertinent Freedom of Information Act Office:

(d) NASA, Ames Research Center, Moffett Field, CA 94035 (415-604-4190).

(e) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805-258-3448).

(f) NASA, Goodard Space Flight Center, Greenbelt, MD 20771 (301-286-0730).

(g) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818-354-5179).

(h) NASA, Langley Research Center, Hampton, VA 23665 (804-864-6125).

(i) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216-433-2313).

(j) NASA, Marshall Space Flight Center, AL 35812 (205-544-5252).

(k) NASA, Stennis Space Center, MS 39529 (601-688-2164).

Limited copies of the Tier 2 DEIS are available, on a first request basis, by contacting David Rusczyk at the address or telephone number indicated herein.

FOR FURTHER INFORMATION CONTACT: David Rusczyk, 713-244-7756.

SUPPLEMENTARY INFORMATION: NASA issued the *Final Tier 1 Environmental Impact Statement for Space Station Freedom*, in March 1991 (the "Tier 1 FEIS") followed by the associated Record of Decision to proceed with full-scale design and development of the concept known as Space Station Freedom.

At the time the Tier 1 FEIS was prepared, detailed design information was not available. As a consequence, some issues relating to the potential environmental effects of Space Station Freedom were deferred to the Tier 2 environmental impact statement. These issues included the impacts of any significant design modifications that might be incorporated as the design matured, and a quantitative analysis of the probability and consequences of inadvertent reentry into the Earth's atmosphere during assembly and operation. Other issues that were deferred included venting of nontoxic gases during operation and change to a hydrazine propulsion system.

On March 9, 1993, the President directed NASA to undertake a redesign of the Space Station Program in such a manner that reductions in the projected costs of Space Station Freedom could be realized. The result was the current ISS, which involves design modifications and agreements to include Russia as a partner.

The proposed action considered in this Tier 2 DEIS is to continue to provide U.S. participation in the

implementation of assembly and operation of the ISS. The Tier 2 DEIS considers the alternative to the proposed action, the "No-Action" alternative (i.e., cancellation of U.S. participation in the ISS).

Significant design changes that have occurred since the Tier 1 FEIS include, but are not necessarily limited to, the following: the number of research laboratories has been increased from three to six; the number of logistics modules has been increased from one to two; the pressurized volume has been almost doubled; the crew size has been increased from four to six; and the orbital inclination has been changed from 28.5 degrees to 51.6 degrees, improving access by Russian launch vehicles and additional mission control capabilities. Assembly of the ISS contemplates 27 NASA Shuttle launches (reduced from 29), 15 Russian launches, 1 European Space Agency launch, and 1 launch of a vehicle yet to be determined. This would increase the total number of launches through completion of assembly from 32 to 44. Accordingly, resupply flights to the completed ISS will now include Russian as well as NASA flights; whereas Space Station Freedom was to be resupplied exclusively by NASA Space Shuttle flights.

The design of the ISS has progressed to the point where it is now possible to conduct a quantitative analysis of the probability and consequences of inadvertent reentry into the Earth's atmosphere. The Tier 2 DEIS assesses the probabilities and potential impacts associated with inadvertent reentry, and addresses potential decommissioning options, including the plan presented in the Tier 1 FEIS. Other issues addressed in the Tier 2 DEIS include the following: the cumulative effects of the U.S. launches associated with the assembly and operation of the ISS, the change to the Unsymmetrical Dimethylhydrazine/Nitrogen Tetroxide propulsion system, and the venting and outgassing of nontoxic gases from the ISS. The Tier 2 DEIS addresses environmental effects on the United States and the integrated ISS impacts on the global commons.

Dated: November 28, 1995.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 95-29609 Filed 12-5-95; 8:45 am]

BILLING CODE 7510-01-M

[Notice (95-109)]

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, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: December 13, 1995, 8:30 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 7H46, 300 E Street, S.W., 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
- Transition and Turbulence
- Aviation Safety Reporting System
- Aeronautics and Astronautics Coordinating Board (AACB)
- Program Development Updates
- Subcommittee Reports

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: November 29, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95-29610 Filed 12-5-95; 8:45 am]

BILLING CODE 7510-01-M

[Notice (95-110)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Holl Technologies Company, (hereinafter called HTC), of 1884 Eastman Avenue, Suite 101, Ventura, CA 93003, has applied for a partially exclusive license to practice the invention protected by U.S. Patent Application No. 60/003,635, entitled "MECHANICAL CONSOLIDATION OF POWDERS USING POLYMERIC COATINGS,"

which was filed on September 12, 1995, and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. George F. Helfrich, Patent Counsel, NASA Langley Research Center.

DATES: Responses to this Notice must be received by February 5, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, NASA Langley Research Center, Mail Code 212, Hampton, VA 23681-0001; telephone (804) 864-3521.

Dated: November 28, 1995.

Edward A. Frankle,
General Counsel.

[FR Doc. 95-29611 Filed 12-5-95; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Media Arts Teleconference

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a teleconference of the Media Arts Advisory Panel (American Film Institute Section) to the National Council on the Arts will occur on January 4, 1996 from 2:00 p.m. to 4:00 p.m. at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This teleconference is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

Dated: November 29, 1995.

Yvonne M. Sabine,

*Director, Council & Panel Operations,
National Endowment for the Arts.*

[FR Doc. 95-29666 Filed 12-5-95; 8:45 am]

BILLING CODE 7537-01-M

Museum Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions Section B) to the National Council on the Arts will be held January 8-11, 1996, from 9:00 a.m. to 6:00 p.m. on January 8-10 and from 9:00 a.m. to 5:30 p.m. on January 11, 1996. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

Portions of this meeting will be open to the public from 9:00 a.m. to 10:00 a.m. on January 8, for opening remarks and panel instructions and on January 11, from 4:30 p.m. to 5:30 p.m. for a policy discussion.

The remaining portions of this meeting from 10:00 a.m. to 6:00 p.m. on January 8; from 9:00 a.m. to 6:00 p.m. on January 9 and 10; and from 9:00 a.m. to 4:30 p.m. on January 11, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682-5433.

Dated: November 29, 1995.

Yvonne M. Sabine,

*Director, Office of Council and Panel
Operations, National Endowment for the Arts.*

[FR Doc. 95-29667 Filed 12-5-95; 8:45 am]

BILLING CODE 7537-01-M

Arts in Education Advisory Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Partnership Grants Section) to the National Council on the Arts will be held on January 10-12, 1996. The panel will meet from 11:00 a.m. to 5:30 p.m. on January 10; from 9:00 a.m. to 5:30 p.m. on January 11; and from 8:30 a.m. to 4:00 p.m. on January 12. This meeting will be held in Room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506.

Portions of this meeting will be open to the public from 11:00 a.m. to 1:30 p.m. on January 10 for welcome, introductions and orientation and from 3:00 p.m. to 4:00 p.m. on January 12 for a guidelines discussion.

The remaining portions of this meeting from 1:30 p.m. to 5:30 p.m. on January 10; from 9:00 a.m. to 5:30 p.m. on January 11; and from 8:30 a.m. to 3:00 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Access Ability, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682-5433.

Dated: November 29, 1995.

Yvonne M. Sabine,

*Director, Office of Council and Panel
Operations, National Endowment for the Arts.*

[FR Doc. 95-29668 Filed 12-5-95; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-317]

Baltimore Gas and Electric Company (Calvert Cliffs Nuclear Power Plant Unit No. 1); Exemption

I.

Baltimore Gas and Electric Company (BGE or the licensee) is the holder of Facility Operating License No. DPR-53, which authorizes operation of Calvert Cliffs Nuclear Power Plant, Unit 1 (the facility/CC-1), at a steady-state reactor power level not in excess of 2700 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Calvert County, Maryland. The license provides among other things, that it is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II.

By letter dated July 13, 1995, the licensee requested a temporary exemption to 10 CFR 50.44, 10 CFR 50.46, and Appendix K to 10 CFR Part 50 that would enable the use of four lead fuel assemblies during CC-1 Cycles 13, 14, and 15. These regulations refer to pressurized water reactors fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding. The four lead fuel assemblies to be used during these fuel cycles contain fuel rods with zirconium-based claddings that are not chemically identical to zircaloy or ZIRLO.

Since 10 CFR 50.46 and Appendix K to 10 CFR Part 50 identify requirements for calculating emergency core cooling system (ECCS) performance for reactors containing fuel with zircaloy or ZIRLO cladding, and 10 CFR 50.44 relates to the generation of hydrogen gas from a metal-water reaction between the reactor coolant and reactor fuel having zircaloy or ZIRLO cladding, a temporary exemption is required to place the four lead fuel assemblies containing fuel rods with advanced zirconium based cladding in the core during CC-1 Cycles 13, 14, and 15.

III.

Title 10 of the Code of Federal Regulations at 50.12(a)(2)(ii) enables the Commission to grant an exemption from the requirements of Part 50 when special circumstances are present such that 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 50.46 and 10 CFR Part 50, Appendix K is to establish requirements for the calculation of ECCS performance in order to assure reactor safety in the event of a loss of coolant accident. The licensee has performed a calculation demonstrating adequate ECCS performance for CC-1 and has shown that the four lead fuel assemblies do not have a significant impact on that previous calculation. The lead fuel assemblies, with the zirconium-based alloy cladding, meet the same design basis as the Zircaloy-4 fuel which is currently in the CC-1 reactor core and have similar thermal-hydraulic characteristics. No safety limits will be changed or setpoints altered as a result of using the lead fuel assemblies.

The Updated Final Safety Analysis Report (UFSAR) analysis are bounding for the lead fuel assemblies as well as the remainder of the core. The mechanical properties and behavior of the lead fuel assemblies during postulated loss-of-coolant-accidents (LOCA) and non-LOCA transients and operational transients will be essentially the same. In addition, the four lead fuel assemblies represent a small portion of the total core and will be placed in non-limiting core locations which experience no more than 0.95 of the core power density during operation. As such, the licensee has achieved the underlying purpose of 10 CFR 50.46 and 10 CFR Part 50, Appendix K.

The underlying purpose of 10 CFR 50.44 is to ensure that means are provided for the control of hydrogen gas that may be generated following a postulated LOCA. The licensee has provided means for controlling hydrogen gas and has previously considered the potential for hydrogen gas generation stemming from a metal-water reaction. The small number of fuel rods in the four lead fuel assemblies containing advanced zirconium-based claddings in conjunction with the chemical similarity of the advanced claddings to zircaloy and ZIRLO ensures that previous calculations of hydrogen production resulting from a metal-water reaction would not be significantly changed. As such, the licensee has achieved the underlying purpose of 10 CFR 50.44.

In addition to the above, the advanced claddings have been tested for corrosion resistance, tensile and burst strength, and creep characteristics. The test results indicate that the advanced claddings are safe for reactor service under all the anticipated operating conditions considered in the CC-1 UFSAR.

IV.

For the foregoing reasons, the NRC staff has concluded that the use of the four lead fuel assemblies in the CC-1 reactor during Cycles 13, 14, and 15 will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present as specified in 10 CFR 50.12(a)(2)(ii) such that the application of 10 CFR 50.44, 10 CFR 50.46, and Appendix K to 10 CFR Part 50 to explicitly consider the advanced clad fuel rods present within the four lead fuel assemblies is not necessary in order to achieve the underlying purpose of these regulations.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, a temporary exemption is authorized by law and will not endanger life or property or common defense and security and is otherwise in the public interest, and hereby grants BGE a temporary exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and Appendix K to 10 CFR Part 50 in that explicit consideration of the advanced zirconium-based clad fuel present within the four lead fuel assemblies is not required in order to be in compliance with these regulations. This exemption applies only to the four lead fuel assemblies for the time period (Cycles 13, 14, and 15) for which these assemblies will be in the CC-1 reactor core.

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 56622).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 28th day of November 1995.

For the Nuclear Regulatory Commission.
Steven A. Varga,
*Director, Division of Reactor Projects—I/II,
Office of Nuclear Reactor Regulation.*

[FR Doc. 95-29657 Filed 12-5-95; 8:45 am]

BILLING CODE 7590-01-P

[Docket No. 50-325/324]

Carolina Power and Light Company; Brunswick Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption pursuant to 10 CFR 55.11 from certain requirements of its regulations to an applicant for a Senior Reactor Operator License (applicant) at

the Carolina Power & Light Company (CP&L), Brunswick Steam Electric Plant, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the applicant to file a new application before the two-month waiting period required by 10 CFR 55.35(a) expires and, thereafter, to be re-administered a written examination during the week of December 18, 1995. In their written request, CP&L indicated that the applicant has entered a remediation process, and will be ready for re-examination the week of December 18, 1995.

The proposed action is in accordance with CP&L's request on behalf of its employee, the above-referenced applicant for a Senior Reactor Operator License, dated November 8, 1995, for an exemption from the requirements of 10 CFR 55.35(a).

The Need for the Proposed Action

The exemption requested would allow the applicant to be administered a written re-examination during the week of December 18, 1995. This re-examination would be scheduled to coincide with a previously scheduled NRC initial examination visit, and would provide for re-examination prior to the expiration of a two-month time period required by 10 CFR 55.35(a) before an applicant can file a new application in order to retake an initial examination.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the request. The proposed exemption does not change the knowledge and skills requirements for licensing operators, and because the applicant must pass a written examination to be licensed as a Senior Reactor Operator, this proposed exemption would not increase the risk of facility accidents. In addition, the formal action of licensing an operator does not authorize changes to the facility's existing safety limits, safety settings, power operations, or effluent limits.

Because no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure, the change will not increase the probability or consequences of accidents. Accordingly, the Commission concludes that there are no

significant radiological environmental impacts associated with the proposed action.

Regarding potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the requested exemption. Denial of the application would not reduce environmental impacts of plant operation. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Brunswick Steam Electric Plant, Unit 1 and 2 dated January 1974.

Agencies and Persons Consulted

In accordance with its stated policy, on November 27, 1995, the staff consulted with the North Carolina State official, Mr. Johnny James, of the Division of Radiation Protection, North Carolina Department of Environmental, Commerce, and Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee's request on behalf of its employee for an exemption dated November 8, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the

University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Dated at Rockville, Maryland, this 30th day of November, 1995.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Chief, Operator Licensing Branch, Division of Reactor Controls and Human Factors, Office of Nuclear Reactor Regulation.

[FR Doc. 95-29658 Filed 12-5-95; 8:45 am]

BILLING CODE 7590-01-P

Advisory Committee on Reactor Safeguards; Joint Meeting of the Subcommittees on Individual Plant Examinations/Probabilistic Risk Assessment; Postponement

A joint meeting of the ACRS Subcommittees on Individual Plant Examinations (IPEs) and on Probabilistic Risk Assessment (PRA) scheduled to be held on December 14 and 15, 1995, in Room T-2B3, 11545 Rockville Pike, Rockville, Maryland has been postponed due to the need for additional information from the NRC staff. Notice of this meeting was published in the Federal Register on Monday, November 27, 1995 (60 FR 58393). When the meeting is rescheduled, it will be announced in the Federal Register Notice.

For further information contact: Dr. Medhat El-Zeftawy, the cognizant ACRS staff engineer, (telephone 301/415-6889) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: November 28, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95-29660 Filed 12-05-95; 8:45 am]

BILLING CODE 7590-01-P

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 80th meeting on December 19, 20 and 21, 1995, 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:

Tuesday, December 19, 1995—8:30 A.M. until 6:00 P.M.

Wednesday, December 20, 1995—8:30 A.M. until 6:00 P.M.

Thursday, December 21, 1995—8:30 A.M. until 6:00 P.M.

During this meeting the Committee plans to consider the following:

A. Review of NRC's Programmatic Approach to Low-Level Waste Management. The Committee will conclude its deliberations and issue a report on the alternatives to the future course of the NRC's Low-Level Radioactive Waste Disposal Program.

B. National Research Council/National Academy of Science Committee Report on the Technical Bases for Yucca Mountain Standards. The NRC staff will discuss with the Committee its insights on the subject report.

C. International Atomic Energy Agency (IAEA) Activities. The Committee will meet with a representative of the IAEA to discuss relevant waste-related activities.

D. 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. Among the topics to be discussed: pilot test of survey and statistical methodology for site decommissioning, status of HLW program, and public comment on program options for NRC's LLW program.

E. ACNW Priorities. The Committee will review Task Action Plans for the initial grouping of priority review issues identified by the Committee.

F. 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.

G. 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 September 27, 1995 (60 FR 49924). 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 therefor 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 now 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.

The ACNW meeting dates for Calendar Year 1996 are provided below:

ACNW Meeting No. and 1996 ACNW Meeting Dates

- 81—January 24–26, 1996
- 82—March 27–29, 1996
- 83—May 2–4 or May 15–17, 1996 (TBD)
- 84—June 26–28, 1996
- 85—August 21–23, 1996
- 86—September 25–27, 1996
- 87—October 22–23, 1996
- 88—December 10–12, 1996

Dated: November 30, 1995.
Andrew L. Bates,
Advisory Committee Management Officer.
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UNITED STATES NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 10, 1995, through November 24, 1995. The last biweekly notice was published on November 27, 1995 (60 FR 58395).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 5, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board

Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: May 2, 1995

Description of amendments request: The proposed change revises the large-break loss-of-coolant accident (LOCA) dose consequences. The large-break LOCA dose calculation is being changed to include an additional release path through allowable steam generator tube leakage to the atmospheric dump valves (ADV) or turbine bypass valves (TBVs).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability or consequences of an accident previously evaluated are not significantly increased by this change to the large break LOCA dose consequences. This change has no effect on the LOCA safety analysis for emergency core cooling system performance, which demonstrates conformance to the acceptance criteria of 10 CFR 50.46, as described in the PVNGS Updated Final safety Analysis Section 6.3.3. This change has no effect on structures, systems or components prior to a LOCA or any other accident. The new radiological consequences of the revised large break LOCA dose calculation are below 10 CFR 100 limits for the exclusion area boundary (EAB) and low population zone (LPZ), and the 10 CFR 50, Appendix A, GDC 19 limits for the control room, as shown in Table 1-1, Column C. The NRC has previously approved changes to the PVNGS LOCA dose consequences with the acceptance criteria that the doses are still within the guidelines set forth in 10 CFR 100 and GDC 19. This acceptance criteria is described in the Safety Evaluation related to amendment Nos. 64, 50, and 37 to PVNGS Units 1, 2, and 3 respectively, dated September 8, 1992.

The LOCA dose calculation is being changed to include an additional release path through allowable steam generator tube leakage to the ADVs or TBVs. This change is necessary to reflect a revised calculation assumption that, following a large break LOCA, the secondary system pressure would fall below reactor coolant system pressure

and containment pressure when operators cooldown the steam generators by using ADVs or the TBVs (in accordance with the safety analysis and EOPs [emergency operating procedures]). It is desirable to use the ADVs or TBVs to vent secondary system steam and thus reduce heat input to the reactor coolant system following a large break LOCA. No other LOCA analysis assumptions are being changed, and no changes are being made to structures, systems, components or procedures.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change has no impact on any structures, systems, components, or procedures. The only impact is the revised radiological consequences of a large break LOCA to include an additional release path, as discussed in the response to Standard 1 above. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

This change to the large break LOCA dose consequences does not involve a significant reduction in a margin of safety. The new radiological consequences of the revised large break LOCA dose calculation are below 10 CFR 100 limits for the EAB and LPZ, and the 10 CFR 50, Appendix A, GDC 19 limits for the control room, as described in the response to Standard 1 above. The NRC has previously approved changes to the PVNGS LOCA dose consequences with the acceptance criteria that the doses are still within the guidelines set forth in 10 CFR 100 and GDC 19. This acceptance criteria is described in the Safety Evaluation related to amendment Nos. 64, 50, and 37 to PVNGS Units 1, 2, and 3 respectively, dated September 8, 1992. No equipment qualification is affected by the new assumption of a release path through the secondary system following a large break LOCA, and no post LOCA radiation zones will be changed. This change has no impact on any structures, systems, components, or procedures.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: William H. Bateman

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: November 22, 1995

Description of amendment request: The current Technical Specifications (TS) Section 3.3.4.2 describes the limiting condition during which components in the Service Water (SW) system may be inoperable. The TS Section 3.3.4.2 states, in part, "During power operation, the requirements of 3.3.4.1 may be modified to allow any one of the following components to be inoperable provided the remaining systems are in continuous operation." The proposed change will delete the qualifying statement, "... provided the remaining systems are in continuous operation," from TS Section 3.3.4.2. Currently, this statement requires the "remaining systems to be in continuous operation" while allowing one SW loop header, or one SW pump, or one SW booster pump to be inoperable for a period of 24 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would remove the requirement for the remaining SW system components to be in continuous operation while one TS-required component is inoperable. Rather, the remaining components would remain operable, and no change would be made in normal system operation. The SW system provides an accident mitigation function and is not involved in accident initiation sequences. Therefore, the proposed change would not involve a significant increase in the probability of an accident previously evaluated.

The capacity of the SW system is such that its accident mitigation function can be performed by operation of a maximum of two SW pumps, one SW booster pumps, and one SW header. While a TS-required component is inoperable, sufficient accident mitigation capability is provided by the remaining operable components, rather than requiring the remaining systems to be in continuous operation. Therefore, the proposed change would not cause a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would remove the requirement for the remaining SW system

components to be in continuous operation while one TS-required component is inoperable. Rather, the remaining components would remain operable. The proposed change would not change the normal operation of the system, nor would any physical modifications result from the change. The function and capability of the SW systems would remain unchanged. Therefore, the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change would remove the requirement for the remaining SW system components to be in continuous operation while one allowed TS-required component is inoperable. Rather, the remaining TS-required components would remain operable. Adequate assurance of operability is maintained by performance of regular surveillance testing. Maintaining operable status rather than placing equipment in continuous operation does not result in a change in the ability of the SW system to perform its intended function, since the system provides an automatic response to accident conditions, and the system possesses adequate capacity to perform its normal operating function with one allowed TS-required component inoperable. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: David B. Matthews

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: October 24, 1995

Description of amendment request: The proposed amendment will increase the trip setpoints and allowable values for the low power block (P-7).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10CFR50.92, CYAPCO has reviewed the proposed change and has concluded that it does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will relax the power level values for the P-7 interlock by 2 percent. This change affects both the P-7 and P-7N interlocks. The P-7 interlock affects reactor trips on 1) low flow in more than one reactor coolant loop, 2) reactor coolant pump bus under voltage, 3) more than one reactor coolant pump breaker open, 4) main steam line isolation valve closure, 5) turbine trip, and 6) variable low pressure. The P-7 interlock automatically blocks these reactor trips on decreasing power and automatically unblocks these reactor trips on increasing power. The P-7N interlock affects the reactor trip on wide range, neutron flux, high startup rate. P-7N automatically enables this reactor trip on decreasing power level and automatically blocks this reactor trip on increasing power level. The Applicable Modes requirement and Action Statements for the P-7 interlock and the reactor trips associated with both P-7 and P-7N in the Instrumentation Channel and Surveillance Requirements of Technical Specification 3/4.3.1 are being changed by 2 percent to be consistent with the change to P-7. The interlock setpoint cannot cause an accident. Also, the proposed 2 percent increase in the power level still results in a power level well below the power level at which the P-7 interlocked reactor trips are required for accident mitigation, as well as maintaining the high startup rate trip enabled at a higher power level. This proposed power level is consistent with the technical specification requirement prior to the conversion to standard format technical specifications and is also consistent with the Standard Westinghouse technical specification value. Therefore, the proposed change can neither increase the consequences of the design basis accident nor the probability of occurrence of the design basis accidents.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change only modifies the power level for the P-7 and P-7N interlocks. The proposed setpoint is a power level at which stable plant conditions are easier to maintain while transferring the power supply for the reactor coolant pumps between offsite power and the main generator. The setpoint is also well below the power level for which the reactor protection afforded by the trips that are bypassed by P-7 is needed. This cannot create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed change maintains the power level for the P-7 interlock below the power level for which the reactor trips that are

blocked by the P-7 interlock are required. It also raises the power level to a value at which it is easier to maintain stable plant conditions. This will reduce the likelihood of an automatic reactor trip during the transferring of power for the reactor coolant pumps between offsite power and the main generator. The proposed change will result in the high startup rate reactor trip being enabled at a higher power level. This is conservative since it expands the range of coverage for the trip. Therefore, the proposed change does not impact the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: November 1, 1995

Description of amendment request: The proposed amendment will modify Surveillance Requirement 4.6.3.2, "Containment Isolation Valves," (CIVs) to change the surveillance interval from at least once per 18 months to at least once per refueling interval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

CYAPCO has reviewed the proposed change in accordance with 10CFR50.92 and concluded that the change does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Surveillance Requirement 4.6.3.2 of the Haddam Neck Plant Technical Specifications extends the frequency for verifying that each CIV actuates to its required position in response to a safety injection actuation test signal. The proposal would extend the frequency from at least once per 18 months to at least once per

refueling interval (24 months + 25% as allowed by Technical Specification 4.0.2).

The proposed change to Surveillance Requirement 4.6.3.2 does not alter the intent or method by which the surveillance is conducted, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated.

Additional assurance of CIV operability is provided by Surveillance Requirement 4.6.3.3. Surveillance Requirement 4.6.3.3 requires the confirmation of the mechanical operability of the CIVs by the inservice inspection program. The proposed change does not modify these requirements.

Equipment performance over the last four operating cycles was evaluated to determine the impact of extending the frequency of Surveillance Requirement 4.6.3.2. This evaluation included a review of surveillance results, preventive maintenance records, and corrective maintenance records. It has been concluded that the CIVs are highly reliable, and that there is no indication that the proposed extension could cause deterioration in valve condition or performance.

As such, the proposed change to the frequency of Surveillance Requirement 4.6.3.2 will not degrade the ability of the CIVs to perform their safety function.

Based on the above, the proposed change to Surveillance Requirement 4.6.3.2 of the Haddam Neck Plant Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to Surveillance Requirement 4.6.3.2 of the Haddam Neck Plant Technical Specifications extends the frequency for verifying that each CIV actuates to its required position in response to a safety injection actuation test signal. The proposal would extend the frequency from at least once per 18 months to at least once per refueling interval (24 months + 25% as allowed by Technical Specification 4.0.2).

The proposed change does not alter the intent or method by which the surveillance is conducted, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated. As such, the proposed change in the frequency of Surveillance Requirement 4.6.3.2 will not degrade the ability of the CIVs to perform their safety function.

Based on the above, the proposed change to Surveillance Requirement 4.6.3.2 of the Haddam Neck Plant Technical Specifications will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to Surveillance Requirement 4.6.3.2 of the Haddam Neck Plant Technical Specifications extends the frequency for verifying that each CIV actuates to its required position in response to a safety injection actuation test signal. The proposal

would extend the frequency from at least once per 18 months to at least once per refueling interval (24 months + 25% as allowed by Technical Specification Section 4.0.2).

The proposed change does not alter the intent or method by which the surveillance is conducted, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated. As such, the proposed change in the frequency of Surveillance Requirement 4.6.3.2 will not degrade the ability of the CIVs to perform their safety function.

Additional assurance of the operability of the CIVs is provided by Surveillance Requirement 4.6.3.3.

Equipment performance over the last four operating cycles was evaluated to determine the impact of extending the frequency of Surveillance Requirement 4.6.3.2. This evaluation included a review of surveillance results, preventive maintenance records, and corrective maintenance records. It has been concluded that the CIVs are highly reliable, and that there is no indication that the proposed extension could cause deterioration in valve condition or performance.

Based on the above, the proposed change to Surveillance Requirement 4.6.3.2 of the Haddam Neck Plant Technical Specifications does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: November 8, 1995, as supplemented November 17, 1995

Description of amendment request: The proposed amendment would remove the prescriptive Type A containment leakage test rate frequency of 40 plus or minus 10 months and add a reference to perform containment leakage rate tests in accordance with the criteria specified in Appendix J of 10 CFR Part 50 as amended by approved exemptions. In addition, the proposed amendment would revise the test pressure for Type B and C testing to correct a typographical error.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Leakage test rate frequency

1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change is administrative in nature and does not impact plant systems, structures or components. The proposed change will allow the facility's technical specifications to be revised to allow containment sphere leakage testing in accordance with Appendix J to 10 CFR Part 50 as modified by approved exemptions.

2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change is administrative in nature and does not impact plant systems, structures or components. The proposed change will allow the facility's technical specifications to be revised to allow containment sphere leakage testing in accordance with Appendix J to 10 CFR Part 50 as modified by approved exemptions.

3) The proposed change does not involve a significant reduction in a margin of safety.

This change is administrative in nature and does not impact plant systems, structures or components. The underlying purpose of Appendix J is still achieved. Appendix J states that the leakage test requirements provide for periodic verification testing of the leak tightness integrity of the primary reactor containment. The appendix further states that the purpose of the tests is to assure that leakage through the primary containment shall not exceed the allowable leakage rate values as specified in the technical specifications or associated bases. As stated previously, for Big Rock Point and a large percentage of other plants, the Appendix J Type B and C testing programs provide the most significant and meaningful assessment of containment leak tightness. The testing history and structural capability of the containment establish that there is significant assurance that the extended interval between Type A tests will not adversely impact the integrity of the containment.

Test pressure revision

As stated in the technical specification change request, this revision is being performed to be consistent with accident pressure, P_a , used for Big Rock Point. 20 psig is a typographical error. 23 psig has always been used for these tests.

The proposed change does not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

This change is administrative in nature and does not impact plant systems, structures or components. The proposed change will allow the facility's technical specifications to be revised to reflect current containment sphere leakage testing in accordance with Appendix J to 10 CFR Part 50.

2) create the possibility of a new or different kind of accident from any accident previously evaluated.

This change is administrative in nature and does not impact plant systems, structures or components. The proposed change will allow the facility's technical specifications to be revised to reflect current containment sphere leakage testing in accordance with Appendix J to 10 CFR Part 50.

3) involve a significant reduction in a margin of safety.

This change is administrative in nature and does not impact plant systems, structures or components.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: Brian E. Holian, Acting

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: October 16, 1995

Description of amendment request: Appendix J of 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," has recently been revised to include Option B. This option allows the implementation of a performance based Type B and C testing program. The proposed change will add a footnote to Technical Specification (TS) 4.6.1.2.d stating that the Type B and C tests scheduled for Unit 1 refueling outage Cycle 6 (1R6) will be conducted in accordance with Option B and using the guidance of Regulatory Guide 1.163, Revision 0. This option is being incorporated into the licensee's request to implement the improved TS. However, the improved TS are not scheduled to become effective until after the Unit 1 refueling outage 1R6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The change does not involve a significant increase in probability or consequences of an accident previously evaluated. The proposed change does not involve a change to structures, systems, or components which would affect the probability or consequences of an accident previously evaluated in the Vogtle Electric Generating Plant (VEGP) Final Safety Analysis Report (FSAR). The proposed change only provides a mechanism within the Technical Specifications for implementing a performance-based method of determining the frequency for leak rate testing which has been approved by the NRC via a revision to 10 CFR 50, Appendix J.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously analyzed. The amendment will not change the design, configuration, or method of plant operation. It only allows for the implementation of Option B of 10 CFR 50, Appendix J for Unit 1 refueling outage 1R6 without violating the plant Technical Specifications.

3. Operation of VEGP, Unit 1, in accordance with the proposed change will not involve a significant reduction in the margin of safety. The proposed change does not affect a safety limit, an LCO [limiting condition for operation], or the way plant equipment is operated. The NRC is aware that changes similar to this proposed change are required in order to implement Option B of 10 CFR 50, Appendix J. In fact, the staff indicates in Paragraph V.B. of Appendix J that Option B or parts thereof may be adopted by a licensee 30 days after the rule becomes effective by submitting notification of its implementing plan and a request for revision to Technical Specifications. Since the NRC has approved the provision for performance-based testing and must approve this Technical Specification[] change before the performance-based Option B can be implemented, the margin of safety will not be significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308

NRC Project Director: Herbert N. Berkow

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 30, 1995 (noticed in the Federal Register July 5, 1995, (60 FR 35080) as supplemented by letter dated November 20, 1995

Description of amendment request: The proposed amendment would revise the Technical Specifications as follows:

1. The Surveillance Frequency for the drywell bypass test is changed from 18 months to 10 years with an increased testing frequency required if performance degrades.

2. The following changes are requested for the drywell air lock testing: (a) the leakage rate surveillance is moved from the air lock Limiting Condition for Operation (LCO) to the drywell LCO, (b) the requirement for the air lock to meet a specific overall leakage limit is deleted, (c) the Note that an inoperable air lock door does not invalidate the previous air lock leakage test is deleted, (d) the Note which required that the air lock leakage test at 3 psid be preceded by pressurizing the air lock to 19.2 psid is moved to the bases, and (e) the Surveillance Frequency for the air lock leakage test and interlock test is changed from 18 months to 24 months.

3. The Actions Notes in the drywell air lock LCO and the drywell isolation valve LCO that identifies that the Actions required by the drywell LCO must be taken when the drywell bypass leakage limit is not met is deleted.

4. The requirement for the drywell air lock seal leakage rate to meet a specific leakage limit is deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for River Bend Station (RBS) and Grand Gulf Nuclear Station (GGNS), which is presented below:

1. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

The requested changes are either administrative changes which clarify the format of the requirement or change the requirement to match the design bases of the plant, a change which relocates the requirement to the Technical Specification Bases, or a change in surveillance interval. Each of these types of change are discussed below:

1. The administrative changes clarify the format of the requirement or change there requirement to match the design bases of the plant. Clarifying administrative format of

the Technical Specifications does not result in any changes to the Technical Specification requirements and, as a result, does not involve a significant increase in the probability or consequences of an accident previously evaluated. Also, changing the requirements of the Technical Specifications to more closely match the design bases of the plant will continue to assure that the plant will respond as assumed in the accident analyses and, as a result, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes relocate information to the Technical Specification Bases. In the Technical Specifications Bases the relocated information will be maintained in accordance with 10 CFR 50.59 and subject to the change control provisions in Chapter 5 of Technical Specifications. Since any changes to the Technical Specifications Bases will be evaluated per the requirements of 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

3. The proposed changes in frequency for the drywell bypass leakage and drywell air lock surveillances will continue to ensure that no paths exist through passive drywell boundary components that would permit gross leakage from the drywell to the primary containment air space and result in bypassing the primary containment pressure-suppression feature beyond the design basis limit. The Mark III primary containment system satisfies General Design Criterion 16 of Appendix A to 10 CFR Part 50. Maximum drywell bypass leakage was determined previously by reviewing the full range of postulated primary system break sizes. The limiting case was a primary system small break loss of coolant accident (LOCA) and yielded a design allowable drywell bypass leakage rate limit of approximately 35,000 scfm for GGNS and 46,000 scfm (the Technical Specification limit is based on a lower limit of 40,110 scfm) for RBS. The Technical Specifications acceptable limit for the bypass leakage following a surveillance is less than 10% of this design basis value. The most recent bypass leakage value was approximately 2.5% for GGNS and .91% for RBS of the design allowable leakage rate limit for the limiting event. EOI is committed to maintaining programmatic and oversight controls that ensure that drywell bypass leakage remains a small fraction of the design allowable leakage limit.

The drywell is typically exposed to essentially 0 psig during normal plant operation and 3 psig during drywell bypass leak rate testing. These pressures are considerably lower than the structural integrity test pressure and are less likely to initiate a crack or cause an existing crack to grow. Visual inspections of the accessible drywell surfaces that have been performed since the structural integrity tests have not revealed the presence of additional cracking or other abnormalities. Therefore, additional cracking of the drywell structure is not

expected due to testing or operation and, similar to the justification for the ten year 10 CFR 50 Appendix J Type A test interval, it is not considered credible for the passive drywell structure to begin to leak sufficiently to impact the design drywell bypass leakage limit.

The primary containment's ability to perform its safety function is fairly insensitive to the amount of drywell leakage, thereby providing a margin to loss of the drywell safety function that is not normally available for safety systems. This insensitivity is demonstrated by the extremely high limiting event design basis allowable leakage for the drywell (e.g., 35,000 scfm for GGNS and 46,000 scfm for RBS). The limiting leakage is almost an order of magnitude higher for other events. Additionally, an even higher allowable leakage can be realistically accommodated by the primary containment due to the margins in the containment design. Because of the margins available, it will take valves in multiple penetration flow paths leaking excessively to cause the primary containment to fail as a result of overpressurization, the probability that drywell isolation valve leakage will result in primary containment failure due to excessive drywell leakage is not considered significant and this drywell/primary containment failure mode is not considered credible.

The proposed Technical Specification changes have no significant impact on the GGNS Individual Plant Examination (IPE) or the RBS IPE conducted per NRC Generic Letter 88-20. The IPEs considered overpressurization failure of primary containment as part of the primary containment performance assessment. Due to the magnitude of acceptable drywell leakage and the extremely low probabilities of achieving such leakage, primary containment failure due to preexisting excessive drywell leakage was considered a non significant contributor to primary containment failure. Primary containment overpressurization failure can occur with or without preexisting excessive drywell leakage in a severe accident. This is due to physical phenomena associated with potentially extreme environmental conditions inside primary containment following a severe accident. However, the calculated frequency of such extreme conditions is very small. The proposed changes do not impact the IPE evaluated phenomena causing primary containment overpressurization failure nor significantly increase the probability that the drywell has preexisting excessive leakage and therefore would not contribute to these accident scenarios.

For the reasons discussed above, the proposed changes do not have any significant risk impact to accidents previously evaluated and do not significantly increase the consequences of an accident previously evaluated. Additionally, drywell leakage is not the initiator of any accident evaluated; therefore, changes in the frequency of the surveillance for drywell leakage does not increase the probability of any accident evaluated.

Therefore, the proposed changes do not significantly increase the probability or

consequences of an accident previously evaluated.

II. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested changes are either administrative changes which clarify the format of the requirement or change the requirement to match the design bases of the plant, a change which relocates the requirement to the Technical Specification Bases, or a change in surveillance interval. Each of these types of change are discussed below:

1. The administrative changes in the Technical Specification requirements do not involve a physical alteration of the plant (no new or different type of equipment will be installed) nor does it change the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

2. The proposed relocation of requirements does not involve a physical alteration of the plant (no new or different type of equipment will be installed) nor does it change the methods governing normal plant operation. The proposed change will not impose or eliminate any requirements. Adequate control of the information will be maintained in the Technical Specification Bases. Thus, the change proposed does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change modifies the surveillance frequency for drywell bypass leakage and drywell air lock surveillances. The changes only impact the test frequency and do not result in any change in the response of the equipment to an accident. The changes do not alter equipment design or capabilities. The changes do not present any new or additional failure mechanisms. The drywell is passive in nature and the surveillance will continue to verify that its integrity has not deteriorated. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. The proposed change does not involve a significant reduction in a margin of safety.

The requested changes are either administrative changes which clarify the format of the requirement or change the requirement to match the design bases of the plant, a change which relocates the requirement to the Technical Specification Bases, or a change in surveillance interval. Each of these types of changes are discussed below:

1. The administrative changes in the Technical Specification requirements do not involve a physical alteration of the plant (no new or different type of equipment will be installed) nor does it change the methods governing normal plant operation. Thus, this change does not cause a significant reduction in the margin of safety.

2. The relocation of requirements will not reduce a margin of safety because it has no impact on any safety analysis assumptions. In addition, the requirements to be transferred from the Technical Specifications to the Technical Specifications Bases are the same as the existing Technical Specifications. Since any future changes to these requirements in the Technical Specifications Bases will be evaluated per the requirements of 10 CFR 50.59, no reduction (significant or insignificant) in a margin of safety will be allowed.

3. The proposed change modifies the surveillance frequency for drywell bypass leakage and associated air lock surveillances. Reliability of drywell integrity is evidenced by the measured leakage rate during past drywell bypass leakage surveillances. Appropriate design basis assumptions will be upheld, even when combined with the complementary bypass leakage surveillances as proposed. Drywell integrity will continue to be tested by means of the proposed periodic drywell bypass leakage test, performance of the drywell air lock door latching and interlock mechanism surveillance, and performance of additional surveillances including exercising of drywell isolation valves. The combination of these surveillances will provide adequate assurance that drywell bypass leakage will not exceed the design basis limit. Margins of safety would not be reduced unless leakage rates exceeded the design allowable drywell bypass leakage limit. Therefore, the proposed change does not cause a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: William D. Beckner

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: October 26, 1995

Description of amendment request: The proposed amendment would revise the technical specifications for sixteen editorial changes and would delete the requirement for a program to prevent and detect Asiatic Clams (Corbicula) in the service water system (SWS). The editorial changes covers such things as removing systems or components that

do not exist in the River Bend Station, correcting typographical errors, correcting to be consistent with the writers guide for Improved Technical Specifications, adding descriptions for systems to make them clear, and wording changes to be consistent with approved facility operations. The Corbicula program is no longer needed because the facility has been modified and SWS no longer takes water from the Mississippi River; source of the larvae and infestation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

EDITORIAL CHANGES

The purposed changes involves reformatting, renumbering and rewording of the existing Technical Specifications. The reformatting, renumbering and rewording process involves no technical changes to existing Technical Specifications. As such, these changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed changes will not impose or eliminate any new or different requirements. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. These changes are administrative in nature. As such, no question of safety is involved, and the changes do not involve a significant reduction in a margin of safety.

CORBICULA PROGRAM

The proposed change deletes the program associated with the prevention and detection of Asiatic Clams (Corbicula) based upon improvements to the non-safety related Normal Service Water System (SWS). The source of makeup water to the SWS is no longer the Mississippi River, which is the source of Asiatic Clams. Demineralized water or well water is used eliminating the source of asiatic clams. To prevent biofouling SWS is treated with chlorine/bromine. This program is not considered as an initiator for any previously evaluated accident. Therefore, the proposed change will not increase the probability or consequences of any accident previously evaluated.

The proposed change introduces no new mode of plant operation and it does not involve a physical modification to the plant. The possibility of the SES becoming contaminated by any other means is highly unlikely since it is a "closed-loop" system.

Therefore it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Prevention of Asiatic Clam infestation in the SWS and associated safety-related equipment is ensured by the "closed-loop" design of the SWS. Post Refuel Outage (RF-4) inspections of the safety-related heat exchangers that interface with the "closed-loop" SWS have shown no evidence of clam infestations. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: William D. Beckner

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: November 20, 1995

Description of amendment request: The proposed amendment would revise the technical specifications to eliminate the response time testing requirements for selected Reactor Protection System Instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The purpose of the proposed Technical Specification (TS) change is to eliminate response time testing requirements for selected components in the Reactor Protection System (RPS). The Boiling Water Reactors Owners' Group (BWROG) has completed an evaluating which demonstrates that response time testing is redundant to the other TS-required testing. These other tests, in conjunction with actions taken in response to NRC Bulletin 90-01, "Loss of Fill-Oil in Transmitters Manufactured by Rosemount," and Supplement 1, are sufficient to identify failure modes or degradation in instrument response times and ensure operation of the associated systems within acceptable limits. There are no known failure modes that can be detected by response time testing that cannot also be detected by the other TS-required testing. This evaluation was

documented in NEDO-32291, "System Analyses for Elimination of Selected Response Time Testing Requirements," January 1994. Entergy Operations, Inc. (EOI) has confirmed the applicability of this evaluation to River Bend Station (RBS). In addition EOI will complete the actions identified in the NRC staff's safety evaluation of NEDO-32291.

Because of the continued application of other existing TS-required tests such as channel calibration, channel checks, channel functional tests, and logic system functional tests, the response time of these systems will be maintained within the acceptance limits assumed in plant safety analyses and required for successful mitigation of an initiating event. The proposed changes do not affect the capability of the associated systems to perform their intended function within their required response time, nor do the proposed changes themselves affect the operation of any equipment. As a result, EOI has concluded that the proposed changes do not involve a significant increase in the probability or the consequences of an accident previously evaluated.

The proposed changes only apply to the testing requirements for the components identified above and do not result in any physical change to these or other components or their operation. As a result, no new failure modes are introduced. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accidents previously evaluated.

The current TS-required response times are based on the maximum allowable values as assumed in the plant safety analyses. These analyses conservatively establish the margin of safety. As described above, the proposed changes do not affect the capability of the associated systems to perform their intended function within the allowed response time used as the basis for the plant safety analyses. The potential failure modes for the components within the scope of this request were evaluated for impact on instrument response time. This evaluation confirmed that, with the exception of loss of fill-oil of Rosemount transmitters, the remaining TS-required testing is sufficient to identify failure modes or degradation in instrument response times and ensure operation of the instrument within the scope of this request is within acceptable limits. The actions taken in response to NRC Bulletin 90-09 and Supplement 1 are adequate to identify loss of fill-oil failures of Rosemount transmitters. As a result, it has been concluded that plant and systems response to an initiating event will remain in compliance with the assumptions of the safety analysis.

Further, although not explicitly evaluated, the proposed changes will provide an improvement to plant safety and operation by reducing the time safety systems are unavailable, reducing the potential for safety system actuations, reducing plant shutdown risk, limiting radiation exposure to plant personnel, and eliminating the diversion of key personnel resources to conduct unnecessary testing. Therefore, EOI has concluded that this request will result in an overall increase in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: William D. Beckner

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 22, 1995

Description of amendment request: The proposed amendment would modify a requirement of the Seabrook Station, Unit No. 1 Technical Specifications. Specifically, the proposed amendment would change the ACTION referenced in Table 3.3-3, Engineered Safety Features Actuation System Instrumentation, for Functional Unit 8.b, Automatic Switchover to Containment Sump/RWST Level Low-Low. The ACTION requirement would be changed to ACTION 15 from ACTION 18. ACTION 15 requires an inoperable channel to be placed in bypass (with no time limit specified) while ACTION 18 requires an inoperable channel to be placed in the tripped condition within 6 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed change would result in an inoperable Functional Unit 8.b. protective channel being placed in the bypassed condition vice tripped condition. Functional Unit 8.b. is not involved in any accident initiation sequence; therefore, the probability of a previously-analyzed accident is not increased. Placing an inoperable Functional Unit 8.b. in bypass vice trip reduces the probability of premature opening of the containment building sump isolation valves thereby reducing the potential for increasing the consequences of a previously-analyzed

accident. Thus, the consequences of a previously-analyzed accident is not increased.

B. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the change does not reduce the minimum required number of channels of instrumentation to be operable. The change does not alter the function of or affect the failure modes of Functional Unit 8.b. instrumentation channels. The proposed change does not otherwise affect the manner by which the facility is operated, and it does not involve any changes to equipment or features which affect the operational characteristics of the facility.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the change does not reduce the minimum required number of channels of instrumentation to be operable, and it does not involve any changes to equipment or features which affect the operational characteristics of the facility. Therefore, the protection previously provided remains unchanged.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esquire, Northeast Utilities Service Company, Post Office Box 270, Hartford CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: May 26, 1995, supplemented and revised October 20, 1995.

Description of amendment request: The proposed changes would modify TS 3.8.1.1., "Electrical Power Systems, A.C. Sources, Operating," TS 3.8.1.2, "Electrical Power Systems, Shutdown," TS 3.8.2.2, "Electrical Power Systems, A.C. Distribution - Shutdown," and TS 3.8.2.4, "Electrical Power Systems, D.C. Distribution - Shutdown," to provide operational flexibility as well as consistency between action statements and to eliminate certain surveillance requirements that are not applicable in Modes 5 or 6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

In accordance with 10 CFR 50.92, NNECO has reviewed the proposed changes and has concluded that they do not involve an SHC. The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Surveillance Requirement 4.8.1.1.1 is being made because presently, the surveillance requirement for demonstrating offsite sources are operable states that "two" independent circuits are required. The surveillance requirement is referenced for both operating and shutdown modes. While it is accurate for operating modes, it is inconsistent with the limiting condition for operation for shutdown. The proposed change is safe because it renders the surveillance requirement consistent with the applicable limiting condition for operation (i.e., operating or shutdown) and eliminates a potential source of confusion.

The change to Surveillance Requirement 4.8.1.2 and Technical Specification 3.8.2.2 merely clarifies the diesel generator surveillance and operability requirements for Modes 5 and 6 and renders action statements consistent with and appropriate for operational Modes 5 and 6.

Regarding diesel generator surveillance requirements, automatic A.C. power for LNP events in Modes 5 and 6 is not required. This is validated by the fact that the undervoltage sensors are only required to be operable in Modes 1, 2 and 3 to meet technical specifications. Because the undervoltage sensors provide the logic that results in actuation of the sequencer, it follows that the sequencer need not be operable in Modes 5 and 6. Accordingly, the sequencer is not required to support operability of the available diesel generator in Modes 5 and 6. Further, because SIAS is blocked in Modes 5 and 6, automatic start of the diesel generator upon receipt of a SIAS is similarly not required to support operability of the diesel generator in Modes 5 and 6.

Additionally, operation of the diesel generator in parallel with the system during Modes 5 and 6 is not required to perform its intended safety function. In fact, such operation may compromise both sources as the result of a single event.

Since automatic A.C. power is not credited in the mitigation of Mode 5 and 6 events and accidents, such as fuel handling accidents, there is no increase in the probability or consequences of previously evaluated accidents.

The action statement in Technical Specification 3.8.2.2 has been revised to cite actions that are more appropriate for Modes 5 and 6 for Millstone Unit No. 2. This is due to the ability to maintain the plant in a safe condition without needing to automatically load the diesel generator through the sequencers in Modes 5 and 6. In addition, the proposed change is consistent with the CE Owner's Group Standard Technical Specification and with other Millstone Unit No. 2 action statements. Consequently, there

is no increase in the probability or consequences of previously evaluated accidents.

The change to TS 3.8.2.4 merely renders the action statement consistent with, and appropriate for, operational Modes 5 and 6.

Since D.C. power is not credited in the mitigation of Mode 5 and 6 events and accidents, such as fuel handling accidents, there is no increase in the probability or consequences of previously evaluated accidents.

The action statement in TS 3.8.2.4 has been revised to cite actions that are more appropriate for Modes 5 and 6 for Millstone Unit No. 2. This is due to the ability to maintain the plant in a safe condition without D.C. power distribution available in Modes 5 and 6. In addition, the proposed change is consistent with the CE Owner's Group Standard Technical

Specifications (NUREG-1432) and with other Millstone Unit No. 2 action statements. Consequently, there is no increase in the probability or consequences of previously evaluated accidents.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not alter or affect the design, function, failure mode, or operation of the plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes to the technical specifications provides greater consistency between the action statements and clarifies which surveillance requirements are required in Modes 5 and 6. Since the diesel generators are not required to be loaded automatically in Modes 5 and 6, and since it is part of our shutdown risk management program to assure that adequate cooling is able to be provided, and since the diesel will still be verified to start and achieve rated speed, the proposed changes to the technical specifications do not reduce the margin of safety.

The proposed change to the TS provides greater consistency among action statements during Modes 5 and 6. Since the D.C. distribution system is not credited in the mitigation of Mode 5 and 6 events and accidents, and since it is part of our shutdown risk management program to assure that adequate fuel cooling is able to be provided, the proposed change to the TS does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.
NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 27, 1995, as supplemented July 21, 1995

Description of amendment request: The amendment revises the Technical Specifications (TS) to relocate TS requirements for the containment purge exhaust and supply valves, and to remove a duplicate testing requirement for the safety injection input from engineered safety features from the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

... The proposed changes do not involve an SHC [significant hazards consideration] because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The first proposed change relocates the operability and surveillance requirements for the containment high range radiation monitors from Technical Specification Section 3.3.3 to Technical Specification Section 3.3.2. The proposed changes are administrative in nature. The proposed changes do not alter the way any structure, system, or component functions and do not modify the manner in which the plant is operated and do not involve any physical changes to the plant.

The second proposed modification will delete the testing requirement for functional unit 16, "Safety Injection Input from ESF," of Table 4.3-1 because the logic circuitry that processes

the safety injection signals and produces a reactor trip is tested under functional unit 19 "Automatic Trip and Interlock Logic," and the testing is performed on a more frequent basis (i.e., on a monthly staggered bases versus on an 18-month frequency). In addition, the same logic testing is accomplished with an 18-month TADOT of functional unit 1.a of Table 4.3-2 and with a monthly staggered actuation logic testing of functional unit 16 of Table 4.3-2. This testing ensures that operability of the logic under functional unit 16 of Table 4.3-1 is verified. The other tests will continue to verify the operability of the reactor trip system and that a reactor trip will be initiated when required.

Therefore, there is no change in the potential for an increase in the consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not affect the operation or response of any plant equipment or introduce any new failure mechanisms. The proposed elimination of the testing requirement line item does not affect the test results since the logic circuitry that processes the safety injection signal and produces a reactor trip will be tested and is tested under functional unit 19 of Table 4.3-1. As such, the changes do not create the possibility of a new or different kind of accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

The proposed changes do not have any adverse impact on the protective boundaries nor do they affect the consequences of any accident analyzed. The operability and surveillance requirements, although relocated to other technical specifications, will still ensure that the system (the radiation monitors) is tested and within limits. The proposed elimination of the testing equipment will not change the performance or operating conditions of the safety systems. The operable reactor trip system instrumentation ensures that the assumptions in the Bases of the Technical Specifications are not affected and ensures that the margin of safety is not reduced. Therefore, the proposed changes do not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room

Location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: November 14, 1994

Description of amendment requests: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, for the slave relay test frequency from quarterly (Q) to refueling (R). The request would also remove table notation 4 from Table 4.3-2. The associated Bases would also be appropriately revised.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The results of WCAPs 14117 and 13878 demonstrate that slave relays are highly reliable. The WCAPs also provide guidance to assure that slave relays remain highly reliable. The aging assessment concludes that the age/temperature-related degradation of all ND relays, and NE relays produced after May 1990, is sufficiently slow such that a refueling frequency surveillance interval will not significantly increase the probability of slave relay failures. Finally, the evaluation of the interposing slave relays in the emergency diesel generator start circuitry, control room ventilation and auxiliary building ventilation realignments, steam generator blowdown isolation and radwaste isolation systems has concluded that based on the tests of the interposing relays performed during other equipment testing, reasonable assurance is provided that failures will be identified if the associated slave relays are tested on a refueling frequency.

The removal of table notation 4 from TS Table 4.3-2 is an administrative change that eliminates unnecessary redundancy from the TS and does not affect plant operation.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the performance of the ESFAS mitigation systems assumed in the plant safety analysis. Changing the interval for periodically verifying ESFAS slave relays (assuring equipment operability) will not create any new accident initiators or scenarios.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated for DCCP.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not affect the total ESFAS response assumed in the safety analysis since the reliability of the slave relays will not be significantly affected by the increased surveillance frequency.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room

Location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps

Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: William H. Bateman

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: August 18, 1995, as supplemented on November 1, 1995

Description of amendment request: The proposed amendment would revise the Operating License and Technical Specifications to allow for a power uprate to 2900 MWt. The current maximum power level is 2775 MWt.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability or consequences of an accident previously evaluated is not significantly increased.

Implementation of uprate power operation does not contribute to any accident evaluated in the FSAR [Final Safety Analysis Report]. The NSSS [Nuclear Steam Supply System] Components (RV [reactor vessel], RCPs [reactor coolant pumps], CRDMs [control rod drive mechanisms], SGs [steam generators], and piping) are compatible with the revised operating conditions. These components have been reanalyzed and the results show that ASME [American Society of Mechanical Engineers] Code requirements remain satisfied and are within the current Licensing Basis.

Interfacing Systems which are important to safety are not adversely impacted and will continue to perform their design function. Overall secondary plant performance is not significantly altered by the proposed changes.

The revision to the Pressure Temperature Limits will not adversely impact the RCS [reactor coolant system] Pressure Boundary. The length of time these curves will be applicable, due to increased neutron fluence, is being reduced. Before the 13 Effective Full Power Years have elapsed, new curves will be generated to reflect the analysis of the specimen capsule and will be derived utilizing NRC approved methodology.

Therefore, since the Reactor Coolant pressure boundary integrity and system functions are not adversely impacted, the probability of occurrence of an accident evaluated in the VCSNS [Virgil C. Summer Nuclear Station] FSAR will be no greater than the original design basis of the plant.

An extensive analysis has been performed to evaluate the consequences of the following accident types currently evaluated in the VCSNS FSAR:

- Non-LOCA [loss-of-coolant accident] Events

- Large Break and Small Break LOCA
- Steam Generator Tube Rupture

With the [delta]75 SGs and revised operating conditions, the calculated results (i.e., DNBR [departure from nucleate boiling ratio], Primary and Secondary System Pressure, Peak Clad Temperature, Metal Water Reaction, Challenge to Long Term Cooling, Environmental Conditions Inside and Outside containment, etc.) for the accidents are similar to those currently reported in the VCSNS FSAR and remain within applicable Regulatory Acceptance Criteria. Select results (i.e., Containment Pressure during a Steam Line Break, Minimum DNBR for Rod Withdrawal from Subcritical, etc.) are slightly more limiting than those currently reported in the FSAR due to the use of the assumed operating conditions with the [delta]75 SGs and in some cases, use of an uprated core power of 2900 MWt. However, in all cases, the calculated results do not challenge the integrity of the primary/secondary/containment pressure boundary and remain within the regulatory acceptance criteria applied to VCSNS's current licensing basis.

Given that calculated radiological consequences are not significantly higher than current FSAR results and remain well within 10 CFR 100 limits, it is concluded that the consequences of an accident previously evaluated in the FSAR are not significantly increased.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Uprate power operation will not introduce any new accident initiator mechanisms. Structural integrity of the RCS is maintained during all plant conditions through compliance with the ASME code and 10 CFR 50 Appendix G requirements. Design requirements of auxiliary systems are met with the RSGs [replacement steam generators] and uprate power operation. No new failure modes or limiting single failures have been identified. Since the safety and design requirements continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, no new accident scenarios have been created. Therefore, the types of accidents defined in the FSAR continue to represent the credible spectrum of events to be analyzed which determine safe plant operation.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

Although uprate power operation will require changes to the VCSNS Technical Specifications, the proposed changes are supported by extensive LOCA, NON-LOCA and SGTR [steam generator tube rupture] analyses. These analyses show acceptable consequences with margin to the applicable regulatory limits. All equipment required to function during accident conditions has been shown to remain qualified and thus will perform their design function, and all components remain in compliance with the codes and standards in effect when VCSNS was originally licensed (with the exception of

the replacement steam generators which use the 1986 ASME Code Section III Edition).

Low Temperature Overpressure transients which could challenge RCS structural integrity are not impacted by the revision to the Pressure Temperature Limitations Curves. The curves are not directly impacted, the changes do not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

NRC Project Director: Frederick J. Hebdon

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: August 29, 1995

Description of amendment request: The proposed amendment would revise the Technical Specifications for allowable values and trip setpoints for selected plant process instrumentation. The new allowable values/setpoints are in accordance with the instrument setpoint methodology accepted by the NRC staff in a letter dated July 18, 1995.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revised Trip Setpoints and Allowable Values are more conservative than those currently approved in the Technical Specifications. Therefore, any proposed system or component actuations will occur earlier, resulting in a more conservative plant response. Thus, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the Technical Specifications does not introduce any new components nor does it modify the design of any existing components. Other than making Trip Setpoints and Allowable Values of existing instrumentation more conservative, the change does not affect the design or function of any plant system, structure, or component, nor does it change the way plant systems are operated. Thus, the possibility of a new or different kind of accident previously evaluated is not created.

3. The proposed change does not result in a significant reduction in the margin of safety.

Since the proposed revised Trip Setpoints and Allowable Values are more conservative than the existing values, the margin of safety would be increased by issuance of the changes. Thus, the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: November 2, 1995

Description of amendment request: The proposed amendment would revise the Technical Specifications to allow 120 volt AC buses EV-1-A and EV-1-B to be energized from either their normal inverter power supply or from their alternate power supply.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated:

These buses are not used as the initiator of any analyzed accidents. Therefore, the probability of any previously evaluated accident has not increased. If an accident were to occur while the buses are supplied from the alternate power supply, there would

be no change in the analyzed accident scenario since even in the event of a loss of offsite power event, the safety functions would be completed. Thus, the consequences of any previously evaluated accident have not increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated:

The proposed change introduces no new mode of plant operation and it does not involve physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety:

This change does not involve a significant reduction in a margin of safety since the proposed change maintains a safety related, diesel-backed power supply to these buses whether the power is supplied from the inverters or from the alternate power supply. If a loss of offsite power event were to occur while the buses were supplied from the alternate power source, the safety functions being performed by components supplied from these buses would occur. Thus, there has been no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: November 2, 1995

Description of amendment request: The proposed amendment to the Perry Nuclear Power Plant Technical Specifications revises those specifications associated with handling irradiated fuel in Primary Containment and the Fuel Handling Building, and selected specifications associated with CORE ALTERATIONS. Specifically, analysis identifies that only—recently— irradiated fuel contains sufficient fission products to require OPERABILITY of accident mitigation features to meet the accident analysis assumptions. Analyses also show that accident mitigation features such as

building INTEGRITY and engineered safety feature (ESF) ventilation systems are not required for CORE ALTERATION events.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed requirements are imposed during specific activities which can be postulated to result in significant radioactive releases. The proposed APPLICABILITY requirements are consistent with either the original design basis analyses or with revised analyses performed to support this proposed amendment. Because the equipment controlled by the revised Specifications is not considered an initiator to any previously analyzed accident, inoperability of the equipment cannot increase the probability of any previously evaluated accident.

Consistent with the original design basis analysis, the reanalysis concludes that radiological consequences of the fuel handling accident are well within the 10 CFR 100.11 limits, as defined by acceptance criteria in Standard Review Plan Section 15.7.4. The reanalysis has previously been submitted to the Nuclear Regulatory Commission for review, and NRC confirmatory calculations reached consistent results (reference NRC Safety Evaluation for License Amendment No. 35). The results of the CORE ALTERATION events other than the fuel handling accident remain unchanged from the original design basis, which showed that these events do not result in fuel cladding integrity damage or radioactive releases. Therefore, the proposed changes do not significantly increase the consequences of any previously evaluated accident.

Based on the above, the proposed changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed requirements are imposed when specific activities represent situations where significant radioactive releases can be postulated. The proposed APPLICABILITY requirements are consistent with design basis analyses. The proposed changes do not introduce any new modes of plant operation and do not involve physical modifications to the plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change imposes controls to ensure that during performance of activities which represent situations where radioactive releases are postulated, the radiological consequences are at or below the established licensing limit. Safety margins and analytical conservatism have been evaluated and are well understood. Substantial conservatism is retained to ensure that the analysis adequately bounds all postulated event scenarios. The current margin of safety is retained.

Specifically, the margin of safety for the fuel handling accident is the difference between the 10 CFR 100 limits and the licensing limit defined by the Standard Review Plan (NUREG 0800), Section 15.7.4. The licensing limit is defined by the Standard Review Plan as being—well within—the 10 CFR 100 limits, with “well within” defined as 25% of the 10 CFR 100 limits for the fuel handling accident. Excess margin is the difference between the postulated doses and the corresponding licensing limit. In the NRC's initial licensing review of the Perry Nuclear Power Plant (NUREG-0887, Section 15.3.3), the NRC accepted the design and analyses based on the results of the analyses being well within the guideline values of 10 CFR 100.

The proposed APPLICABILITY requirements continue to ensure that the whole-body and thyroid doses at the exclusion area and low population zone boundaries as well as control room doses are at or below the corresponding licensing limit. The margin of safety is unchanged; therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety for the CORE ALTERATION events other than the fuel handling accident discussed above also remains the same as in the original design basis analyses, since the proposed changes do not impact on the Technical Specification requirements for systems needed to prevent or mitigate such CORE ALTERATION events.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application 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, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. 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 rooms for the particular facilities involved.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: October 6, 1995, and supplemented November 20, 1995

Brief description of amendments: The amendments revise the Technical Specifications by incorporating a new acceptance criterion for steam generator tubes with degradation in the tubesheet roll expansion region.

Date of issuance: November 21, 1995
Effective date: November 21, 1995
Amendment Nos.: 172 and 159
Facility Operating License Nos. DPR-39 and DPR-48: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 16, 1995 (60 FR 53648) The supplemental letter provided clarifying information that did not affect the initial proposed no significant hazards consideration determination. The Commission's

related evaluation of the amendments is contained in a Safety Evaluation dated November 21, 1995.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: August 10, 1995

Brief description of amendment: The amendment revises the Haddam Neck Technical Specification Section 3/4.4.3, "Pressurizer," to add a footnote to allow the pressurizer level to be controlled, outside of the programmed level, between 25 to 50 percent, plus or minus 5 percent in Mode 3 when the reactor coolant system is borated to the required Mode 5 concentrations.

Date of Issuance: November 14, 1995

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 186
Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 11, 1995 (60 FR 52928) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 14, 1995.

No significant hazards consideration comments received: No

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: September 13, 1995, as supplemented October 16, 1995

Brief description of amendments: These amendments revise the Administrative Controls section of the BVPS-1 and BVPS-2 TSs to make them consistent with the requirements of the Offsite Dose Calculation Manual (ODCM). The ODCM was recently updated to reflect the radioactive liquid and gaseous effluent release limits and the liquid holdup tank activity limit of BVPS-1 License Amendment No. 188 and BVPS-2 License Amendment No. 70 which were issued June 12, 1995.

Date of issuance: November 21, 1995
Effective date: As of the date of issuance, to be implemented within 10 days.

Amendment Nos.: 194 and 77
Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 22, 1995 (60 FR 49292) The October 16, 1995, letter did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the September 22, 1995, Federal Register notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 21, 1995.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 14, 1994, as supplemented by letters dated July 25, August 15, and August 29, 1995

Brief description of amendment: The amendment changes the Appendix A Technical Specifications (TSs) to make them consistent with the revised 10 CFR Part 20, Standards for Protection Against Radiation.

Date of issuance: November 17, 1995
Effective date: November 17, 1995

Amendment No.: 116
Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 30, 1994 (59 FR 14888) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 17, 1995. The July 25, August 15, and August 29, 1995 letters provided clarifying information that did not change the initial propose no significance hazards consideration determination.

No significant hazards consideration comments received: No

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: May 12, 1995, as supplemented by letters dated July 6 and October 2, 1995.

Brief description of amendments: The amendments revise Technical Specification Surveillance Requirement 4.6.1.2 to add the provision that 10 CFR Part 50, Appendix J, applies, except as modified by NRC-approved exemptions.

Date of issuance: November 17, 1995

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 91 and 69

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 5, 1995 (60 FR 35078) The July 6 and October 2, 1995, letters provided clarifying information that did not change the scope of the May 12, 1995, application and initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 17, 1995.

No significant hazards consideration comments received: No

Local Public Document Room

location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: July 28, 1995, as supplemented September 12, October 18, and October 31, 1995.

Brief description of amendment: In order to support a full-core offload as a normal end-of-cycle event, the amendment adds License Condition 2.C(6) and will require that: (1) the reactor be subcritical for at least 100 hours prior to the start of reactor refueling operations, (2) the spent fuel pool bulk temperature be maintained less than or equal to 140-F, and (3) two trains of shutdown cooling be operable during reactor refueling operations.

Date of issuance: November 9, 1995

Effective date: As of the date of issuance.

Amendment No.: 89

Facility Operating License No. DPR-21. Amendment revised the license.

Date of initial notice in Federal Register: August 30, 1995 (60 FR 45180) The September 12, October 18, and October 31, 1995, submittals provided additional information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment and Final No Significant Hazards Consideration Determination are

contained in a Safety Evaluation dated November 9, 1995.

No significant hazards consideration comments received: No public comments received. A request for a hearing was received from We the People, the Seacoast Anti-Pollution League, the New England Coalition on Nuclear Pollution, and Donald Del Core of Uncasville, Connecticut.

Local Public Document Room

location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: October 6, 1995, supplemented October 23, November 2, and November 15, 1995.

Brief description of amendment: The amendment adds footnotes to Action Statement (AS) 3.8.1.1.a of the Technical Specification (TS) and its bases to allow a one-time extension of the allowed outage time (AOT) for an inoperable offsite power source from the current 72 hours to 7 days.

Date of issuance: November 22, 1995

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 192

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 17, 1995 (60 FR 53812). The October 23, November 2, and November 15, 1995, letters provided clarifying information and slight modifications to the original request that were not outside the scope of the original notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 1995.

No significant hazards consideration comments received: No

Local Public Document Room

location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360

Northern States Power Company, Docket No. 50-282, Prairie Island Nuclear Generating Plant, Unit No. 1, Goodhue County, Minnesota

Date of application for amendment: January 10, 1995, as supplemented August 9 and September 20, 1995.

Brief description of amendment: The amendments revise the Prairie Island

event monitoring instrumentation Technical Specifications and associated Bases to conform to Standard Technical Specifications for post-accident monitoring.

Date of issuance: November 9, 1995

Effective date: November 9, 1995, with full implementation within 30 days.

Amendment Nos.: 121/114

Facility Operating License No. DPR-42 and DPR-60. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 15, 1995 (60 FR 8753) The August 9 and September 20, 1995, letters provided updated Technical Specification pages and clarifying information in response to discussions with the staff during various teleconferences conducted during the review process. This information was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1995.

No Significant hazards consideration comments received: No

Local Public Document Room

location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: December 2, 1994, as supplemented May 12, 1995.

Brief description of amendments: These amendments relocate the fire protection requirements from the Technical Specifications to the Updated Final Safety Analysis Report in accordance with the guidance in Generic Letter (GL) 86-10, "Implementation of Fire Protection Requirements," and GL 88-12, "Removal of Fire Protection Requirements from Technical Specifications."

Date of issuance: November 20, 1995

Effective date: As of date of issuance, both units, to be implemented within 30 days.

Amendment Nos.: 104 and 68

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications and the License.

Date of initial notice in Federal Register: April 26, 1995 (60 FR 20524) The supplemental letter provided clarifying information and did not

change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 20, 1995.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: September 14, 1995 and supplemented by letter dated October 27, 1995

Brief description of amendments: These amendments revise the technical specifications by deleting Reactor Enclosure and Refueling Area Secondary Containment Isolation Valve Tables 3.6.5.2.1-1 and 3.6.5.2.2-1, and references to them, in accordance with Generic Letter 91-08, "Removal of Component lists from Technical Specifications." The TS have been modified to state requirements in general terms that include the components listed in the tables removed from the TS.

Date of issuance: November 20, 1995
Effective date: As of date of issuance, to be implemented within 30 days.

Amendment Nos.: November 20, 1995
Facility Operating License Nos.: NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 11, 1995 (60 FR 52934) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 20, 1995.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464

Tennessee Valley Authority, Docket No. 50-296, Browns Ferry Nuclear Plant, Unit 3, Limestone County, Alabama

Date of application for amendments: October 4, 1995 (TS 368)

Brief description of amendment: The amendment delete requirements for daily checks for certain instruments that do not have indications, and provides editorial changes.

Date of issuance: November 13, 1995
Effective Date: November 13, 1995
Amendment No.: 202

Facility Operating License No.: DPR-68: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 11, 1995 (60 FR 52935) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 1995.

No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 7, 1995 (TS 95-03)

Brief description of amendments: The amendments address operation with a rod urgent failure condition, including limited operation with one control or shutdown bank inserted up to 18 steps below its insertion point. In addition, the surveillance interval for rod movement verifications has been increased from 31 to 92 days.

Date of issuance: November 21, 1995

Effective date: November 21, 1995

Amendment Nos.: 215 and 205

Facility Operating License Nos.: DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in Federal Register: August 30, 1995 (60 FR 45186) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 1995.

No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: April 28, 1995

Brief description of amendment: The amendment removes the license conditions for the Transamerica Delaval, Inc. emergency diesel generators specified by paragraph 2.C.(9) and defined in Attachment 2 to the Operating License.

Date of issuance: November 16, 1995

Effective date: November 16, 1995

Amendment No.: 74

Facility Operating License No.: NPF-58: This amendment revises the license.

Date of initial notice in Federal Register: June 6, 1995 (60 FR 29889)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1995.

No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: June 23, 1995, and facsimile transmission dated October 31, 1995

Brief description of amendment: This amendment relocates TS 3/4.3.3.3, "Seismic Instrumentation;" TS 3/4.3.3.4, "Meteorological Instrumentation;" and TS 3/4.4.11, "Reactor Coolant System Vents;" and the Bases for each of the three sections from the TS to the Updated Safety Analysis Report, and eliminates the special reporting requirements for inoperable seismic and meteorological monitoring instrumentation from TS 6.9.2.

Date of issuance: November 14, 1995
Effective date: November 14, 1995, and shall be implemented not later than 90 days after issuance.

Amendment No.: 201

Facility Operating License No.: NPF-3: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39455) The October 31, 1995, facsimile transmission was clarifying in nature and did not affect the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 1995.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: June 7, 1995

Brief description of amendment: This amendment revises Technical Specification 3/4.9.4, Refueling Operations - Containment Penetrations;

Bases 3/4.9.4, Containment Penetrations; and Limiting Condition for Operation (LCO) 3.9.4.b to allow both doors of the containment personnel airlock to be open during core alterations or movement of irradiated fuel within the containment, provided that certain specified conditions are met. Additional changes revise or clarify TS LCO 3.9.4.c, TS Action 3.9.4.a, and TS Surveillance Requirement 4.9.4, and modify the associated Bases.

Date of issuance: November 17, 1995

Effective date: November 17, 1995

Amendment No.: 202

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39454) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 17, 1995.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: December 6, 1994

Brief description of amendments: These changes revise Technical Specifications to allow appropriate remedial action for high particulate levels in the diesel generator fuel oil inventory and other out-of-limit properties in new diesel generator fuel oil that has been added to the existing diesel generator fuel oil storage inventory.

Date of issuance: November 17, 1995

Effective date: November 17, 1995

Amendment Nos.: Unit 1 - Amendment No. 43; Unit 2 - Amendment No. 29

Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 1, 1995 (60 FR 6311) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 17, 1995.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Union Electric Company, Docket No. 50-483, Callaway Plant, Callaway County, Missouri

Date of amendment request: January 13, 1995

Brief description of amendment: The amendment revises Technical Specifications (TS) 3.3.1 and 3.3.2 to relocate Tables 3.3-2 and 3.3-5, which provide the response time limits for the reactor trip system and the engineered safety features actuation system instruments, from the TS to the updated Final Safety Analysis Report (FSAR). The amendment also relocates the Bases discussion for TS 3.3.1 and TS 3.3.2 to Section 16.3 of the updated FSAR.

Date of issuance: November 22, 1995

Effective date: November 22, 1995, to be implemented within 30 days of issuance.

Amendment No.: 104

Facility Operating License No. NPF-30. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 15, 1995 (60 FR 8741) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 1995.

No significant hazards consideration comments received: No

Local Public Document Room locations: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: June 6, 1995

Brief description of amendment: The amendment modifies the Index of the WNP-2 Technical Specifications by deleting reference to the Bases pages.

Date of issuance: November 24, 1995

Effective date: November 24, 1995

Amendment No.: 143

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 19, 1995 (60 FR 37102) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 24, 1995.

No significant hazards consideration comments received: No

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: September 13, 1995, and October 19, 1995, as supplemented by letter dated October 25, 1995

Brief description of amendments: These amendments revise Technical Specification (TS) Section 15.1, "Definitions," TS Section 15.3.1.G, "Operational Limitations" (and basis), and TS Figure 15.2.1-2, "Reactor Core Safety Limits, Point Beach Unit 2." The changes reduce the reactor coolant system raw measured total flow rate limit and reflect new reactor core safety limits for Unit 2.

Date of issuance: November 17, 1995

Effective date: November 17, 1995

Amendment Nos.: 165 and 169

Facility Operating License No. DPR-24 and DPR-27: Amendments revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes (60 FR 54527 dated October 24, 1995). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by November 24, 1995, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration is contained in a Safety Evaluation dated November 17, 1995.

No significant hazards consideration comments received: No

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: September 14, 1995

Brief description of amendment: The amendment revised Technical Specification 3/4.5.5 to increase the allowed outage time for adjustment of boron concentration for the refueling water storage tank from 1 hour to 8 hours.

Date of issuance: November 13, 1995

Effective date: November 13, 1995, to be implemented within 30 days of issuance.

Amendment No.: 91

Facility Operating License No. NPF-42. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 11, 1995 (60 FR 52936) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 1995.

No significant hazards consideration comments received: No

Local Public Document Room

Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (exigent public announcement or emergency circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to

respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. 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 for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By January 5, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project

Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: November 9, 1995, as supplemented by letters dated November 13, 1995, and November 16, 1995

Brief description of amendments: These amendments revise Technical Specification (TS) Section 15.4.2, "In-Service Inspection of Safety Class Components," to incorporate a new steam generator tube acceptance criterion for the Unit 2 steam generators. This criterion allows tubes that are degraded or defective in a location (within the tubesheet) that does not affect the structural integrity of the tube to remain in service. The applicable basis is also changed.

Date of issuance: November 22, 1995

Effective date: November 22, 1995

Amendment Nos.: 166 and 170

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 22, 1995.

No significant hazards consideration comments received: No

Local Public Document Room

location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: Gail H. Marcus

Dated at Rockville, Maryland, this 29th day of November 1995.

For the Nuclear Regulatory Commission
Elinor G. Adensam,
Deputy Director, Division of Reactor Projects - III/IV, Office of Nuclear Reactor Regulation
[Doc. 95-29540 Filed 12-5-95; 8:45 am]

BILLING CODE 7590-01-F

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-21547; No. 812-9652]

Southland Life Insurance Company, et al.

November 29, 1995.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Southland Life Insurance Company ("Southland"), Southland Separate Account A1 (the "Account"), and ING America Equities, Inc. ("ING Equities").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk and enhanced death benefit charges from the assets of: (a) The Account in connection with the offer and sale of certain variable annuity contracts ("Existing Contracts"); (b) the Account in connection with the issuance of variable annuity contracts that are substantially similar in all material respects to the Existing Contracts ("Future Contracts," together with Existing Contracts, the "Contracts"); and (c) any other separate account established in the future by Southland in connection with the issuance of Contracts ("Future Account").

FILING DATE: The application was filed on June 29, 1995. Applicants have undertaken to amend the application during the notice period to make the representations contained herein.

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 Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 26, 1995, and must 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 Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o R. Scott Burton, Assistant General Counsel, Southland Life Insurance Company, 5780 Powers Ferry Road, NW., Atlanta, Georgia 30327-4390.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Wendy Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942-0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Southland is a stock life insurance company organized pursuant to the laws of the State of Texas and authorized to transact life insurance and annuity business in the District of Columbia and all states other than New York and Vermont. Southland is a wholly-owned indirect subsidiary of Internationale Nederlanden Groep, N.V., a diversified financial services company with headquarters in The Hague, Netherlands.

2. ING Equities, an affiliate of Southland, will serve as the principal underwriter of the Existing Contracts. ING Equities is registered with the Commission as a broker-dealer pursuant to the Securities Exchange Act of 1934 and is a member of the National Securities Dealers, Inc.

3. The Account was established by Southland as a separate investment account pursuant to Texas insurance law on February 24, 1994, as a funding medium for variable annuity contracts. The Account is registered with the Commission as a unit investment trust under the 1940 Act. Pursuant to Texas law, the assets of the Account attributable to the Contracts are owned by Southland but are held separately from all other assets of Southland for the benefit of owners of, and persons entitled to payments under, the Contracts.

4. The Account currently has twenty-one subaccounts ("Subaccounts") that each invest exclusively in the shares of

a designated investment portfolio of The Alger American Fund, Variable Insurance Products Fund, Variable Insurance Products Fund II, or the Janus Aspen Series.

5. The Existing Contracts are available for purchase in connection with retirement plans that qualify for federal tax advantages available pursuant to the Internal Revenue Code ("qualified contracts") and that do not qualify for the special federal tax advantages available pursuant to the Internal Revenue Code ("non-qualified contracts").

6. The minimum initial purchase payment is \$5,000 for a non-qualified Existing Contract and \$1,000 for a qualified Existing Contract. The minimum additional purchase payment is \$500 for non-qualified Existing Contract and \$250 for a qualified Existing Contract (or \$90 for an individual retirement annuity on a monthly program of purchase payments).

7. The Existing Contracts provide a death benefit that is the greatest of the following, less taxes incurred by Southland but not taken:

(1) the aggregate purchase payments made (less partial withdrawals and any charges taken in connection with partial withdrawals), accumulated at 4% per year (0% after attained age 75) up to a maximum of two times the sum of all net purchase payments (less partial withdrawals and any charges taken in connection with partial withdrawals;

(2) the accumulation value at the time of death; and

(3) the step-up benefit¹ plus net purchase payments made, less partial withdrawals (and charges taken in connection with partial withdrawals) since the last step-up anniversary.

8. The portion of the death benefit equal to the accumulation value, or to the sum of the purchase payments made less partial withdrawals (and any charges taken in connection with partial withdrawals), constitutes the basic death benefit. The death benefit in excess of the foregoing basic death benefit, including purchase payments accumulated at 4% interest, as described in (1) of paragraph 7 above, and the step-up benefit, as described in (3) of paragraph 7 above, constitutes the

¹ At each step-up anniversary, the current accumulation value is compared to the prior determination of the step-up benefit, increased by purchase payments made and reduced by partial withdrawals and any surrender and partial withdrawal transaction charges taken since that anniversary. The greater of these becomes the new step-up benefit. The step-up anniversaries are the contract date and every sixth contract anniversary thereafter (i.e., sixth, twelfth, eighteenth, etc., contract anniversaries).

enhanced death benefit ("Enhanced Death Benefit").

9. The Existing Contracts permit transfer of accumulation value among Subaccounts, subject to certain conditions. Prior to the annuity date, up to twelve transfers each contract year are permitted with no charge. Each additional transfer is subject to a charge of \$25. After the annuity date, no more than four transfers each contract year are permitted. No charge is assessed for a transfer after the annuity date. Southland represents that it does not expect that the total revenues from the excess transfer charge will be greater than the total cost of administering excess transfer, on average, over the period that the Existing Contracts are in force.

10. If the more than one partial withdrawal (other than a withdrawal pursuant to a systematic withdrawal program or Individual Retirement Account income program) is made during a contract year, Southland will charge the lesser of \$25 or 2% of the amount withdrawn for each additional partial withdrawal. This charge will be deducted from each Subaccount in the same proportion that the contract owner's Subaccount accumulation value bears to the contract owner's accumulation value. Southland represents that it does not expect that the total revenues from this charge will be greater than the total expected cost of administering partial withdrawals.

11. For the accounts of contract owners who reside in states that require payment of premium taxes at the time purchase payments are made, Southland currently advances the amount of the charge for premiums taxes, without reducing the contract owner's accumulation value. Southland then recovers the amount of the premium payments that it advanced upon the surrender of a contract or on the annuity date. Applicable premium taxes depend on the contract owner's place of residence and general range from 0% to 3.5% of purchase payment or the amount annuitized. Southland represents that the amount that it will recover for premium taxes will not be greater than the amount of premium taxes required to be paid.

12. The Existing Contracts do not provide for a front-end sales load to be deducted from the purchase payments. However, within certain time periods, if all or a portion of the contract value is withdrawn prior to the annuity date, a contingent deferred sales charge ("CDSC") will be calculated at the time of each withdrawal and deducted from the contract value. This charge reimburses Southland for expenses

incurred in connection with the promotion, sale and distribution of the Existing Contracts. The CDSC is equal to the percentage of each purchase payment surrendered or withdrawn as shown in the table below. The CDSC is separately calculated and applied to each purchase payment at the time that the payment is surrendered or withdrawn. For purposes of calculating the CDSC, earnings are considered withdrawn before purchase payments and purchase payments are considered withdrawn on a first-in-first-out basis.

Contract anniversaries since purchase payment was made	Surrender charge as a percentage of purchase payment withdrawn
0	7
1	6
2	5
3	4
4	3
5	2
6+	0

13. Proceeds from CDSC may not cover the expected costs of distributing the Contracts. Any shortfall will be paid for from Southland's general assets, which may include revenue from the mortality and expense risk charge, described below.

14. Southland will assess the following charges ("Administrative Charges"): (i) during the accumulation period only, an annual charge of \$30 per contract year from each Existing Contract, if total purchase payments paid in the first contract year are less than \$100,000; and (ii) during both the accumulation and annuity periods, a charge which is equal, on an annual effective basis, to 0.15% of the average daily net asset value of each Existing Contract. Southland guarantees that it will not raise Administrative Charges for the duration of the Existing Contracts. Southland also represents that it does not expect that the total revenues from the Administrative Charges will be greater than the total expected cost of administering the Existing Contracts on average, excluding costs that are categorized properly as distribution expenses.

15. Southland assumes mortality risks under the Existing Contracts because they: (i) impose a contractual obligation to pay a death benefit if an annuitant dies prior to the annuity date; (ii) do not impose any CDSC on the death benefit; (iii) impose a contractual obligation to make annuity payments for the entire life of the annuitant under annuity options involving life contingencies; and (iv) contain annuity tables that

Southland guarantees for the duration of the contract. Southland also assumes the risk that annuitants as a group will live longer than its annuity tables predict, which would require Southland to pay more in annuity payments than it anticipated.

16. Southland also assumes expense risks under the Existing Contracts because the administrative charges under outstanding Existing Contracts, which cannot be raised, may be insufficient to cover the actual administrative expenses attributable to the Existing Contracts. Administrative expenses include principally the costs of the following: processing purchase payments, annuity payments, surrenders and transfers; furnishing confirmation notices and periodic reports; calculating mortality and expense charges; preparing voting materials and tax reports; updating registration statements; actuarial and other expenses; initially devoting a data processing system to administer the Existing Contracts; ongoing operating expenses of such a system in connection with performing the foregoing functions; and fees paid to outside administrators for additional data processing services.

17. As compensation for assuming the basic mortality and expense risks, Southland will assess, during the accumulation period and the annuity period, a daily charge for mortality and expense risks at an annual effective rate of 1.25% of the net asset value of the Account ("Mortality and Expense Risk Charge"). Of this amount, approximately 0.90% is attributable to mortality risks, and approximately 0.35% to expense risks.

18. As compensation for providing the Enhanced Death Benefit, during the accumulation period but not during the annuity period, Southland will assess a daily charge at an annual effective rate of 0.12% of the net asset value of the Account ("Enhanced Death Benefit Charge").

19. Southland guarantees that it will not increase the amount of mortality and Expense Risk Charge or the Enhanced Death Benefit Charge for any Contract once that Contract is issued. If the Mortality and Expense Risk Charge and Enhanced Death Benefit Charge are insufficient to cover the expenses and costs, the loss will be borne by Southland. Conversely, if the amounts deducted prove more than sufficient, the excess will be profit to Southland. Southland expects to earn a profit from the Mortality and Expense Risk Charge and the Enhanced Death Benefit Charge. To the extent that the CDSC is insufficient to cover the actual costs of distribution, the expenses will be paid

from Southland's general account assets, which will include profit, if any, derived from the mortality and expense risk charge.

Applicants' Legal Analysis and Conditions

1. Pursuant to Section 6(c) of the 1940 Act, the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act or from any rule or regulation 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 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services normally performed by the bank itself.

3. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the Mortality and Expense Risk Charge and the Enhanced Death Benefit Charge from the assets of the Account and any Future Accounts in connection with the Contracts.

4. Applicants assert that the Mortality and Expense Risk Charge of 1.25% is reasonable in relation to the risks assumed by Southland under the Existing Contracts and reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that these determinations are based upon an analysis of publicly available information about similar industry products, and by taking into consideration such factors as current charge levels and benefits provided, the existence of charge guarantees and guaranteed annuity rates. Southland undertakes to maintain at its home office a memorandum, available to the Commission and its staff upon request, setting forth in detail the methodology used in making the foregoing determinations.

5. Applicants assert that the charge of 0.15% for the Enhanced Death Benefit is reasonable in relation to the risks assumed by Southland under the Existing Contracts for providing the Enhanced Death Benefit. Southland undertakes to maintain at its home office a memorandum, available to the Commission and its staff upon request, setting forth in detail the methodology used in determining that the risk charge of 0.15% for the Enhanced Death Benefit is reasonable in relation to the risks assumed by Southland under the Existing Contracts.

6. Southland has concluded that there is a reasonable likelihood that the Account's distribution financing arrangement will benefit the Account and its investors. Southland represents that it will maintain and make available to the Commission and its staff upon request a memorandum setting forth the basis of such conclusion.

7. Applicants represent that, before relying on the exemptive relief requested in this application in connection with Future Contracts, Applicants will make the same determinations on the same basis as to the Mortality and Expense Risk Charge, the Enhanced Death Benefit Charge, and the distribution financing arrangement under such Future Contracts and maintain at their home office memoranda, available to the Commission and its staff upon request, setting forth in detail the methodology used in making such determinations.

8. Southland represents that the assets of the Account and any Future Accounts will be invested only in an underlying portfolio which undertakes, in the event it 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 a board of directors (or trustees), the majority of whom are not "interested persons" of such portfolio within the meaning of Section 2(a)(19) of the 1940 Act.

9. Applicants submit that their request for exemptive relief would promote competitiveness in the variable annuity contract market by eliminating the need for redundant exemptive applications, thereby reducing Applicants' administrative expenses and maximizing the efficient use of their resources. Applicants further submit that the delay and expense involved in having repeatedly to seek exemptive relief would impair their ability effectively to take advantage of business opportunities as they arise. Further, 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 protection.

Conclusion

For the reasons summarized 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. 95-29619 Filed 12-5-95; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 21549; 811-6594]

First Prairie Special Equity Fund; Notice of Application

November 29, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregulation under the Investment Company Act of 1940 (the "Act").

APPLICANT: First Prairie Special Equity Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 2, 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 December 26, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Three First National Plaza, Chicago, Illinois 60670.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942-0584, 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 an open-end non-diversified management investment company organized as a Massachusetts business trust. On March 13, 1992, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N-8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement has not been declared effective and applicant has not made a public offering of its shares.

2. Applicant has not issued or sold any securities. As of the date of the filing of the application, applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Pursuant to unanimous written consent dated October 26, 1995, applicant's Board of Trustees determined that it was advisable and in the best interests of applicant to withdraw its registration statement with the SEC, cease to be registered as an investment company, and to liquidate its assets and terminate its existence as a Massachusetts business trust.

4. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-29620 Filed 12-5-95; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 21552; 811-6596]

First Prairie International Fund; Notice of Application

November 29, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: First Prairie International Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 2, 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 December 26, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Three First National Plaza, Chicago, Illinois 60670.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942-0584, 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 an open-end non-diversified management investment company organized as a Massachusetts business trust. On March 13, 1992, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N-8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement has not been declared effective and applicant has not made a public offering of its shares.

2. Applicant has not issued or sold any securities. As of the date of the filing of the application, applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administration proceeding.

3. Pursuant to unanimous written consent dated October 26, 1995, applicant's Board of Trustees determined that it was advisable and in the best interests of applicant to withdraw its registration statement with the SEC, cease to be registered as an investment company, and to liquidate

its assets and terminate its existence as a Massachusetts business trust.

4. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-29614 Filed 12-5-95; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 21554; 811-6598]

First Prairie Growth Equity Fund; Notice of Application

November 29, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: First Prairie Growth Equity Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant request an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 2, 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 December 26, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Three First National Plaza, Chicago, Illinois 60670.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942-0584, 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 an open-end non-diversified management investment company organized as a Massachusetts business trust. On March 13, 1992, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N-8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement has not been declared effective and applicant has not made a public offering of its shares.

2. Applicant has not issued or sold any securities. As of the date of the filing of the application, applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Pursuant to unanimous written consent dated October 26, 1995, applicant's Board of Trustees determined that it was advisable and in the best interests of applicant to withdraw its registration statement with the SEC, cease to be registered as an investment company, and to liquidate its assets and terminate its existence as a Massachusetts business trust.

4. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-29612 Filed 12-5-95; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 21553; 811-6593]

First Prairie Equity/Income Fund; Notice of Application

November 29, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: First Prairie Equity/Income Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 2, 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 December 26, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Three First National Plaza, Chicago, Illinois 60670.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942-0584, 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 an open-end non-diversified management investment company organized as a Massachusetts business trust. On March 13, 1992, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N-8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement has not been declared effective and applicant has not made a public offering of its shares.

2. Applicant has not issued or sold any securities. As of the date of the filing of the application, applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Pursuant to unanimous written consent dated October 26, 1995, applicant's Board of Trustees determined that it was advisable and in the best interests of applicant to withdraw its registration statement with the SEC, cease to be registered as an investment company, and to liquidate its assets and terminate its existence as a Massachusetts business trust.

4. Applicant is not now engaged, nor does it propose to engage in any business activities other than those

necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 95-29613 Filed 12-5-95; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-21558; No. 812-9722]

The Prudential Insurance Company of America, et al.

November 29, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: The Prudential Insurance Company of America ("Prudential"), The Prudential Variable Appreciable Account ("Separate Account"), and Pruco Securities Corporation, Inc. ("Pruco Securities").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Section 27(a)(3) of the 1940 Act and Rule 6e-3(T)(b)(13)(ii) thereunder.

SUMMARY OF APPLICATION: This order will permit the Separate Account to issue flexible premium survivorship variable life insurance contracts ("Contracts") in which the sales charge deducted from premiums up to one target premium paid during any year exceeds the sales charge payable on any excess premium payments made in any prior year.

FILING DATE: The application was filed on August 14, 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 Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 26, 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 Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

Applicants, Thomas Castano, Prudential Insurance Company of America, Prudential Plaza, Newark, New Jersey 07102.

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: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Prudential, a New Jersey mutual life insurance company, offers life insurance and annuities in all states, the District of Columbia, and in all United States' territories and possessions.

2. The Separate Account is a separate account established by Prudential to fund the Contracts and other variable life insurance contracts issued by Prudential. The Separate Account is registered with the Commission under the 1940 Act as an unit investment trust, and interests in the Contracts are registered with the Commission as securities under the Securities Act of 1933. The Separate Account presently is comprised of fifteen sub-accounts ("Sub-Account") each of which invests exclusively in a corresponding portfolio of the Prudential Series Fund, Inc. The Prudential Series Fund, Inc. is an open-end diversified management investment company registered under the 1940 Act. Its shares currently are sold only to separate accounts of Prudential and certain subsidiaries of Prudential that fund variable life insurance and variable annuity contracts.

3. Pruco Securities, a wholly-owned subsidiary of Prudential, is the principal underwriter for the Contracts. Pruco Securities is registered as a broker-dealer under the Securities Exchange Act of 1934.

4. The Contracts are flexible premium survivorship variable life insurance contracts. The Contracts provide life insurance coverage on two insureds with a death benefit payable when the last-surviving of the two insureds dies. The Contracts allow Contract owners to allocate premium payments among various Sub-Accounts and a fixed-rate option.

5. In addition, the Contracts offer Contract owners a choice between a fixed insurance amount or a variable insurance amount. The fixed insurance amount provides a death benefit under the Contract equal to the basic insurance amount regardless of the investment

performance of the investments chosen by Contract owners, provided the Contract remains in force. The variable insurance amount provides for an initial basic insurance amount, but favorable investment performance and the payment of additional premiums generally will result in an increase in the death benefit.

6. After paying the initial premium, Contract owners generally are free to pay premiums at any time and in any amount (above a minimum of \$25), and the Contracts will not lapse if the Contract fund is sufficient to cover monthly fees and charges deducted from the account value.¹ If the Contract owners pay premiums at or above certain levels, the Contract owner will be entitled to guaranteed death benefits even if poor investment performance results in the Contract fund dropping below the amount needed to pay charges due under the Contract. If target premiums are paid at the beginning of each Contract year, the Contract will stay in force during the defined period known as the limited death benefit guaranteed period (assuming no loans or withdrawals).² The target premiums will be level if the Contract contains no riders or extra risk charges. If the Contract includes certain riders, these premiums may increase each year, reflecting increasing rider charges. The target level premium, the premium used by Prudential to calculate the applicable charges for sales expenses, is the target premium less premiums for single life riders, and any premiums associated with aviation, avocation, occupational, or temporary extras. The target level premium is always less than the guideline annual premium as defined in Rule 6e-3(T)(c)(8).

7. certain fees and charges are deducted under the Contracts. Each Sub-Account is assessed a daily mortality and expense risk charge, as well as monthly administrative charges, cost of insurance charges, charges for optional rider benefits, charges to compensate Prudential for the risk in providing the death benefit guarantee,

¹ The Contract fund is defined as the total amount credited to a specific Contract and is equal to the sum of all amounts invested in the account and any earnings thereon, the amount invested in the fixed-rate option and earnings thereon, and the principal amount of any Contract debt.

² The Contract also allows the Contract owner to choose to pay guideline premiums that, if paid at the beginning of each Contract year, will keep the Contract in force for the life of the Contract regardless of investment performance (assuming no loans or withdrawals). As discussed below, the sales, charges for the Contract are, however, always computed with reference to the target level premium, not the issuer's higher guideline premium required to guarantee the death benefit for life.

and charges for special insurance class rating, if any. In addition to these daily and monthly charges, Prudential will charge the lesser of 2% or \$10 for each partial withdrawal, reserving the right to increase this charge to the lesser of 2% or \$25. Prudential also will charge up to \$25 for each transfer among investment options exceeding 12 in any Contract year. Prudential does not currently impose a charge for decreasing the basic insurance amount but reserves the right to charge up to \$25 for each decrease.

8. In addition, Prudential will deduct from each premium payment a charge for taxes attributable to premiums. This charge currently consists of two parts: (1) an amount based on an average of state and local premium taxes—presently, 2.5% of each premium payment; and (2) a charge to cover the estimated cost of an increase in Prudential's federal income tax liabilities that is measured by premiums received, and currently is 1.25% of each payment.

9. During the first 20 Contract years, Applicants also propose to deduct from premium payments a sales charge. This change will be equal to: (1) for the first Contract year, 30% of all premiums up to the amount of the target level premium and 4% of premiums paid in excess of the target level premium ("Excess Premiums"); and (2) for Contract years 2 through 20, 7.5% of all premiums paid in each Contract year to the target premium and 4% for Excess Premiums paid in each such Contract year. If the average age of the insureds is 58 years or more, these charges may be reduced to comply with the sales charge limitations contained in Rule 6e-3(T) under the 1940 Act.

Applicants' Legal Analysis

1. Section 27(a)(3) of the 1940 provides that the amount of sales charge deducted from any of the first twelve monthly payments on a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment. Section 27(a)(3) further provides that the sales charge deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment.

2. Rule 6e-3(T)(b)(13)(ii) provides a partial exemption from the prohibitions of Section 27(a)(3). Exemptive relief from the prohibitions of Section 27(a)(3) provided by Rule 6e-3(T)(ii) is available if the proportionate amount of sales charge deducted from any premium does not exceed the proportionate amount deducted from any prior premium payment, unless an increase is caused by reductions in the annual cost

of insurance or in sales charge for amounts transferred to a variable life insurance contract from another plan of insurance. Rule 6e-3(T)(b)(13)(ii) thus permits a decrease in sales load for any subsequent premium payment but not an increase.

3. Under the Contracts' sales load structure, premium payments that do not exceed the target level premium in a year will be subject to a 30% sales charge in the first year and 7.5% in each subsequent year up to the 20th Contract year. Excess Premium payments in each such year, however, will be subject to only a 4% sales charge. Consequently, if a Contract owner pays Excess Premiums in the Contract year, the Contract owner will pay one level of sales charge on the portion of the premium up to the target level premium and a lower sales charge on the Excess Premiums paid in that same Contract year. Applicants thus request an exemption from the requirements of Section 27(a)(3) and Rule 6e-3(T)(b)(13)(ii) because the Contracts' sales load structure would appear to violate the "stair-step" provisions in Section 27(a)(3) and because the exemption from Section 27(a)(3) provided by Rule 6e-3(T)(b)(13)(ii) does not seem to apply to the Contracts' sales load structure.

4. Applicants state that, had they chosen to impose the higher front-end sales load equally on all premium payments, the Contracts would qualify for exemptive relief under Rule 6e-3(T)(b)(13)(ii), subject to the maximum limits permissible under subparagraph (b)(13)(i) of the Rule. Applicants assert, however, that such a front-end charge would be less favorable to Contract owners than provided under the Contracts; under such a sales charge structure, sales load would be recovered by Prudential earlier than is the case under the Contracts' sales load structure. The sales charge structure under the Contracts benefits Contract owners by spreading Prudential's recovery of sales load over a longer period of time, and thereby permitting a greater portion of a Contract owner's Excess Premiums to be credited to account value.

5. In addition, Applicants represent that the sales load structure has been designed based on Prudential's operating expenses for the sale of the Contracts and, thus, reflects in part the lower overall distribution costs (including commissions paid to sales persons) that are associated with Excess Premiums paid over the life of a Contract. Applicants submit that it would not be in the best interests of a Contract owner to require the imposition of a higher sales load

structure than Applicants deem necessary to adequately defray their expenses.

6. applicants argue that Section 27(a)(3) was designed to address the abuse of periodic payment plan certificates under which large amounts of front-end sales loads were deducted so early in the life of the plan that an investor redeeming in the early periods would recoup little of his or her investment since only a small portion of the investor's early payments were actually invested. Applicants submit that the deduction of a reduced front-end sales load on Excess Premiums paid in any Contract year does not have the detrimental effect that Section 27(a)(3) was designed to prevent because a greater proportion of the Contracts' sales loads are deducted later than otherwise would be the case.

Conclusion

For reasons states above, Applicants submit that the requested exemptions from Section 27(a)(3) of the 1940 Act, and Rule 6e-3(T)(b)(13)(ii) thereunder, are in accordance with the standards of Section 6(c) of the 1940 Act, and are consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-29616 Filed 12-5-95; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 21550; 811-6599]

First Prairie Municipal Income Fund; Notice of Application

November 29, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: First Prairie Municipal Income Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 2, 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 December 26, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Three First National Plaza, Chicago, Illinois 60670.

FOR FURTHER INFORMATION CONTACT:

Diane L. Titus, Paralegal Specialist, at (202) 942-0584, 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 an open-end non-diversified management investment company organized as a Massachusetts business trust. On March 13, 1992, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N-8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement has not been declared effective and applicant has not made a public offering of its shares.

2. Applicant has not issued or sold any securities. As of the date of the filing of the application, applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Pursuant to unanimous written consent dated October 26, 1995, applicant's Board of Trustees determined that it was advisable and in the best interests of applicant to withdraw its registration statement with the SEC, cease to be registered as an investment company, and to liquidate its assets and terminate its existence as a Massachusetts business trust.

4. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-29617 Filed 12-5-95; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 21551; 811-6597]

First Prairie Quality Income Fund; Notice of Application

November 26, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregulation under the Investment Company Act of 1940 (the "Act").

APPLICANT: First Prairie Quality Income Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 2, 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 December 26, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Three First National Plaza, Chicago, Illinois 60670.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942-0584, 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.

Applicants' Representations

1. Applicant is an open-end non-diversified management investment

company organized as a Massachusetts business trust. On March 13, 1992, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N-8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement has not been declared effective and applicant has not made a public offering of its shares.

2. Applicant has not issued or sold any securities. As of the date of the filing of the application, applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Pursuant to unanimous written consent dated October 26, 1995, applicant's Board of Trustees determined that it was advisable and in the best interests of applicant to withdraw its registration statement with the SEC, cease to be registered as an investment company, and to liquidate its assets and terminate its existence as a Massachusetts business trust.

4. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-29615 Filed 12-5-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36529; International Series Release No. 892; File No. 600-20]

Self-Regulatory Organizations; International Securities Clearing Corporation; Order Approving Extension of Temporary Registration as a Clearing Agency Through November 30, 1996

November 29, 1995.

Pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act"),¹ on October 23, 1995, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") a request that the Commission extend ISCC's temporary registration as a clearing agency until November 30, 1997.² Notice of ISCC's request for extension of temporary registration appeared in the Federal

Register on October 31, 1995.³ No comments were received. This order approves ISCC's amendment by extending ISCC's registration as a clearing agency through November 30, 1996.

On May 12, 1989, the Commission granted the application of ISCC for registration as a clearing agency pursuant to Sections 17A and 19(a) of the Act⁴ and Rule 17Ab2-1(c)⁵ thereunder for a period of eighteen months.⁶ At that time, the Commission granted ISCC an exemption from compliance with Section 17A(b)(3)(C) of the Act.⁷ Section 17A(b)(3)(C) of the Act requires that ISCC's rules assure fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission subsequently extended ISCC's temporary registration as a clearing agency and temporary exemption from Section 17A(b)(3)(C) of the Act until November 30, 1995.⁸

As discussed in the order first granting ISCC's temporary registration as a clearing agency, one of the primary reasons for ISCC's registration was to enable it to provide for the safe and efficient clearance and settlement of international securities transactions by providing links to centralized, efficient processing systems in the United States and to foreign financial institutions. ISCC continues to develop its capacity to offer these services.⁹

As stated above, ISCC has an exemption from the fair representation requirements of Section 17A(b)(3)(C) of the Act. Pursuant to this exemption, ISCC's sole shareholder, the National Securities Clearing Corporation ("NSCC") elects ISCC's Board of Directors. ISCC's rules for election of

³ Securities Exchange Act Release No. 36411 (October 20, 1995), 60 FR 55399.

⁴ 15 U.S.C. §§ 78q-1 and 78s(a) (1988).

⁵ 17 CFR 240.17Ab2-1(c).

⁶ Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691.

⁷ 15 U.S.C. § 78q-1(b)(3)(C) (1988).

⁸ Securities Exchange Act Releases Nos. 28606 (November 16, 1990), 55 FR 47976; 30005 (November 27, 1991), 56 FR 63747; and 33233 (November 22, 1993), 58 FR 63195.

⁹ ISCC has added three service providers, Standard Bank of South Africa, Westpac Custodian Nominees Limited of Australia, and Westpac Nominees-NZ-Limited, to its Global Clearance Network Service to provide settlement and custody services in South Africa, Australia, and New Zealand, respectively. Securities Exchange Act Release Nos. 35392 (February 16, 1995), 60 FR 10415 and 36339 (October 5, 1995), 60 FR 53447. ISCC also has established links with Monte Titoli, S.p.A., an Italian settlement and depository service, and Caja de Valores, S.A., an Argentine settlement and depository service. Securities Exchange Act Release Nos. 35219 (January 11, 1995), 60 FR 3685 and 35218 (January 11, 1995), 60 FR 3686.

directors are not operatives.¹⁰ At the time of ISCC's initial registration, ISCC requested that the exemption from the fair representation requirement of the Act remain in place until the earlier of (1) the time ISCC has twenty-five active members or (2) 1992. Although both these benchmarks have been surpassed, ISCC continues to believe that it does not have a meaningful participant base with only thirty-seven of its forty-four members currently using ISCC services. ISCC states that if its participants have the ability to participate in the selection of the board of directors these participants will have an inordinate and unintended control of the nomination and voting processes.¹¹

The Commission believes that ISCC should diligently work towards compliance with the requirements of Section 17A(b)(3)(C) and expects that ISCC will no longer require an exemption from the fair representation requirements no later than the end of this extension of its registration as a clearing agency.

It is therefore ordered, that ISCC's registration as a clearing agency be, and hereby is, approved until November 30, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-29689 Filed 12-5-95; 8:45 am]

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¹⁰ ISCC's rules provide for ISCC's Board of Directors to consist of a maximum of twenty-two members. ISCC's rules further provide that (1) twelve of those directors are to be selected from the general partners or officers of participants by ISCC's nominating committee, (2) two directors are to be officers of ISCC, and (3) eight directors are to be nominees of NSCC. Participants may submit names to ISCC's Nominating committee by submitting a petition to ISCC's Secretary signed by the lesser of 5% of the participants or fifteen participants. If a participant nominates a candidate for participant director, ballots would be sent out to all participants to vote in accordance with their usage of ISCC's system. NSCC would vote its shares to elect the participant directors selected by the participants.

¹¹ *Supra* note 6.

¹² 17 C.F.R. § 240.30-3(a)(50) (1994).

¹ 15 U.S.C. § 78q-1 (1988).

² Letter from Julie Beyers, Associate Counsel, ISCC, to Christine Sibille, Division of Market Regulation, Commission (October 20, 1995).

[Release No. 34-36525; File No. SR-CBOE-95-67]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Establishment of Uniform Listing and Trading Guidelines for Narrow-based Stock Index Warrants

November 29, 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 November 9, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" 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 November 20, 1995, the CBOE submitted Amendment No. 1 ("Amendment No. 1") to the filing to clarify issues relating to settlement values for both narrow-based and broad-based index warrants and also the reporting of hedge unwinding transactions.¹ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange rules 30.35, 30.53, and 31.5 to establish uniform listing and trading guidelines applicable to narrow-based stock index warrants.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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 CBOE 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 CBOE 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

On August 29, 1995, the Commission approved SR-CBOE-94-34 which established uniform listing and trading guidelines for broad-based stock index, currency, and currency index warrants.² This filing proposes rules governing the listing and trading of narrow-based indexes, *i.e.*, indexes that do not meet the Commission's criteria for broad-based treatment. This filing would modify the recently approved regulatory framework for the trading of broad-based stock index warrants, by adopting certain rules for the trading of warrants on narrow-based indexes that are now applicable to the trading of narrow-based index options.

The Exchange first traded narrow-based index options in September 1983. Exchange rules governing the trading of warrants, including stock index warrants, were approved in October 1990³ and similar rules were approved for another exchange as early as 1988.⁴ Because of the years of experience the Exchange has with trading index options and the Commission has with regulating index option and warrant trading, the Exchange believes that the trading of warrants based on narrow-based indexes presents no new or novel regulatory issues and should be permitted subject to the same restrictions that apply to the trading of narrow-based stock index options.

Specifically, the Exchange proposes that the margin requirements applicable to the short sales of narrow-based index options would apply to the short sale of narrow-based index warrants, and the reduced position limits applicable to narrow-based index options would apply to narrow-based index warrants. The Exchange proposes that the narrow-based index warrant position limit be set at 75% of the levels recently approved by the Commission for narrow-based index options.⁵ In all

other respects, the rules applicable to broad-based and narrow-based options are the same. Consequently, all other rules applicable to broad-based index warrants would apply to warrants on narrow-based indexes. In addition, the Exchange would conduct the surveillance of trading in narrow-based index warrants in a similar manner to its surveillance of trading in broad-based index warrants.

The Exchange proposes that, upon Commission approval of this filing, the Exchange be permitted, without further Commission review, to list a warrant on any narrow-based index that the Commission has previously approved for options or warrant trading. In order to expedite the review of a particular warrant issue, the Exchange proposes employing procedures similar to those set forth in Rule 24.2(b) to file for approval of the index underlying a proposed issuance of warrants.⁶ However, the Exchange will not list a warrant on an index consisting of fewer than nine stocks, nor will it allow any of the indexes upon which warrants are traded to consist of fewer than nine stocks, unless the Commission separately approves such index for warrant trading.

The Exchange also proposes to amend Rule 31.5(E)(5) in order to clarify that the settlement mechanism for narrow-based index warrants will be the same as that for broad-based index warrants.⁷ Accordingly, an issuer may elect to use closing prices for the securities underlying a stock index to determine settlement values at all times other than the day on which the final settlement value is to be determined ("valuation date"), as well as during the two business days preceding valuation date.⁸

2. Statutory Basis

CBOE believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will permit trading in warrants based on the Mexico 30 Index pursuant to rules designed to

12,000 position limit levels currently applicable to narrow-based index option trading.

⁶ These criteria establish streamlined procedures for listing options on stock industry groups (*i.e.*, narrow-based). Accordingly, the Exchange proposes that the same criteria apply to subsequent proposals to establish narrow-based indexes which underlie proposed warrant issuances.

⁷ See Amendment No. 1.

⁸ See Amendment No. 1. The Commission notes that although the recently approved regulatory framework for broad-based index warrants establishes uniform settlement valuation provisions adopted by several exchanges, including CBOE, the CBOE in this filing proposes to amend Rule 31.5(E)(5) to clarify such provisions.

¹ See Letter from Timothy Thompson, CBOE, to Steve Youhn, SEC, dated November 15, 1995.

Specifically, as discussed below, Amendment No. 1 clarifies that narrow-based index warrants will be governed by the same settlement procedures applicable to broad-based index warrants.

Furthermore, it clarifies that certain hedge unwinding transactions in narrow-based index warrants which are undertaken as a result of early exercises will be reported to the Exchange in the same manner as with broad-based index warrants.

² See Securities Exchange Act Release No. 36169.

³ See Securities Exchange Act Release No. 28556 (Oct. 26, 1990).

⁴ See Securities Exchange Act Release No. 26152 (Oct. 3, 1988).

⁵ See Securities Exchange Act Release No. 36439 (Oct. 31, 1995). Accordingly, the Exchange proposes that position limits for narrow-based index warrants be set at 4,500,000, 6,750,000, and 9,000,000, which are equivalent to 75% of the 6,000, 9,000, and

prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in warrants based on additional indexes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no 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 will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-95-67 and should be submitted by December 27, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-29690 Filed 12-5-95; 8:45 am]

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[Release No. 34-36439A; File No. SR-CBOE-95-56]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Modifications of the Position and Exercise Limits for Narrow-Based Index Options

November 30, 1995.

Correction

In FR Document No. 95-27424, beginning on page 56075, column 1, for Monday, November 6, 1995, a phrase in footnote number three was incorrectly stated. The first part of footnote number three is corrected to read:

Under CBOE Rule 24.4A, the current position limits for industry index options are as follows: (1) 5,500 contracts if the CBOE determines in its semi-annual review that any single underlying stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the review; . . ."¹

The remainder of footnote number three remains unchanged.

In addition, the position limits for the Standard & Poor's ("S&P") Chemical Index and the S&P Retail Index were incorrectly stated as 5,500 contracts. The position limits for both the S&P Chemical Index and the S&P Retail Index are revised to be stated as 7,500 contracts.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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⁹ 17 CFR 200.30-3(a)(12) (1994).

¹ 17 CFR 200.30-3(a)(12) (1994).

[Release No. 34-36527; International Series Release No. 891; File No. SR-Amex-95-43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto by the American Stock Exchange, Inc. Relating to Index Fund Shares

November 29, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 26, 1995, the American Stock Exchange, Inc. ("Amex" 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 Amex. On November 14, 1995, the Amex filed Amendment No. 1 to its proposal.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 Amex proposes to list and trade under Amex Rules 1000A *et seq.* Index Fund Shares, which are shares issued by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index.

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.

¹ 15 U.S.C. 78s(b)(1) (1988).

² In Amendment No. 1, the Amex states that any broker-dealer handling transactions for customers in "World Equity Benchmark Securities" (or "WEBS") will have an obligation to deliver to such customers a prospectus regarding WEBS pursuant to the requirements of the Securities Act of 1933. Amendment No. 1 also states that prior to listing series of Index Fund Shares for indices other than those described in the present rule filing, it will make an appropriate filing pursuant to Rule 19b-4 under the Act. Letter from James F. Duffy, Executive Vice President and General Counsel, Legal Chief, Office of Market Supervisor, Division of Market Regulation, Commission, dated November 14, 1995 ("Amendment No. 1").

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Introduction

The Amex proposed to list and trade under Rules 1000A *et seq.* Index Fund Shares issued by an open-end management investment company ("Fund") that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index. Index Fund Shares will be issued by an entity registered with the Commission as an open-end management investment company, and which may be organized as a series fund providing for the creation of separate series of securities, each with a portfolio consisting of some or all of the component securities of a specified securities index. A Fund may be managed so as to permit the purchase or sale of certain securities in the underlying portfolio in an effort to track, to the extent desired, the relevant securities index. A Fund may establish tracking tolerances which will be disclosed in the prospectus for a particular Fund or series thereof. Such Fund or series normally will not replicate exactly a specific index, but instead will seek to track an index within the tolerances stated in the prospectus.

Issuances of Index Fund Shares by a Fund will be made only in minimum Creation Unit size aggregations or multiples thereof. The size of the applicable Creation Unit size aggregation will be set forth in the Fund's prospectus and will vary from one series of Index Fund Shares to another, but generally will be of substantial size (e.g., value in excess of \$500,000 per Creation Unit). It is expected that a Fund will issue and sell Index Fund Shares through a principal underwriter ("Distributor") on a continuous basis at the net asset value per share next determined after an order to purchase Index Fund Shares in Creation Unit size aggregations is received in proper form. Following issuance, Index Fund Shares would be traded on the Exchange like other equity securities by professionals, as well as retail and institutional investors.

It is expected that Creation Unit size aggregations of Index Fund Shares generally will be issued in exchange for the "in kind" deposit of a specified portfolio of securities, together with a cash payment representing, in part, the amount of dividends accrued up to the time of issuance. It is anticipated that such deposits will be made primarily by

institutional investors, arbitrageurs, and the Exchange specialist. Redemption of Index Fund Shares generally will be made "in kind," with a portfolio of securities and cash exchanged for Index Fund Shares that have been tendered for redemption. Issuance or redemptions also could occur for cash under specified circumstances (e.g., if it is not possible to effect delivery of securities underlying the specific series in a particular foreign country) and at other times in the discretion of the Fund.

It is expected that a Fund will make available on a daily basis a list of the names and the required number of shares of each of the securities to be deposited in connection with issuance of Index Fund Shares of a particular series in Creation Unit size aggregations, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends.

A Fund make periodic distributions of dividends from net investment income, including net foreign currency gains, if any, in an amount approximately equal to accumulated dividends on securities held by the Fund during the applicable period, net of expenses and liabilities for such period.

Index Fund Shares will be registered in book entry form through The Depository Trust Company. Trading in Index Fund Shares on the Exchange may be effected until 4:15 p.m. (New York time) each business day.

Index Fund Shares initially to be listed on the Exchange will be series ("Index Series") of World Equity Benchmark Shares issued by Foreign Fund, Inc., and based on the following Morgan Stanley Capital International ("MSCI") Indices ("MSCI Indices" or "Indices"); MSCI Australia Index; MSCI Belgium Index; MSCI Canada Index; MSCI France Index; MSCI Germany Index; MSCI Hong Kong Index; MSCI Italy Index; MSCI Japan Index; MSCI Malaysia Index; MSCI Mexico Index; MSCI Netherlands Index; MSCI Singapore (Free) Index; MSCI Spain Index; MSCI Sweden Index; MSCI Switzerland Index; and MSCI United Kingdom Index.³

Foreign Fund, Inc. will issue and redeem WEBS of each Index Series only in aggregations of shares specified for each Index Series. The following table sets forth the number of shares of an Index Series that it is anticipated will constitute a Creation Unit for such Index Series:

Index series	Shares per creation unit
Australia Index Series	75,000
Austria Index Series	40,000
Belgium Index Series	40,000
Canada Index Series	75,000
France Index Series	75,000
Germany Index Series	250,000
Hong Kong Index Series	40,000
Italy Index Series	40,000
Japan Index Series	250,000
Malaysia Index Series	75,000
Mexico Index Series	75,000
Netherlands Index Series	75,000
Singapore (Free) Index Series	75,000
Spain Index Series	40,000
Sweden Index Series	75,000
Switzerland Index Series	75,000
United Kingdom Index Series	75,000

3. The MSCI Indices⁴

General

The Indices were founded in 1969 by Capital International S.A. as the first international performance benchmarks constructed to facilitate accurate comparison of world markets. Morgan Stanley acquired rights to the Indices in 1986. The MSCI Indices have covered the world's developed markets since 1969, and in 1988, MSCI commenced coverage of the emerging markets.

Although local stock exchanges traditionally have calculated their own indices, these generally are not comparable with one another, due to differences in the representation of the local market, mathematical formulas, base dates, and methods of adjusting for capital changes. MSCI applies the same criteria and calculation methodology across all markets for all indices, developed and emerging.

MSCI generally seeks to have 60% of the capitalization of a country's stock market reflected in the MSCI Index for such country. Thus, the MSCI Indices balance the inclusiveness of an "all share" index against the replicability of a "blue chip" index.

Weighting

All single-country MSCI Indices are market capitalization weighted, *i.e.*, companies are included in the indices at their full market value (total number of shares issued and paid up, multiplied by price). For countries that restrict foreign ownership, MSCI calculates two indices. The additional indices are called "free" indices, and they exclude companies and share classes not purchasable by foreigners. Free indices currently are calculated for Singapore, Mexico, the Philippines, and Venezuela,

³The Exchange has stated that it will make an appropriate filing pursuant to Rule 19b-4 under the Act prior to listing series of Index Fund Shares for indices other than those described in the present proposal. Amendment No. 1, *supra* note 2.

⁴The description of the MSCI Indices was prepared by Foreign Fund, Inc.

and for those regional and international indices which include such markets.

Selection Criteria

The constituents of a country index are selected from the full range of securities available in the market, excluding issues which are either small or highly illiquid. Non-domiciled companies and investment trusts are also excluded from consideration. After the index constituents are chosen, they are reclassified using MSCI's schema of 38 industries and eight economic sectors to facilitate cross-country comparisons.

The process of choosing index constituents from the universe of available securities is consistent among indices. Determining the constituents of an index is an optimization process which involves maximizing float and liquidity, reflecting accurately the market's size and industry profiles, and minimizing cross-ownership.

To reflect accurately country-wide performance, MSCI aims to capture 60% of total market capitalization at both the country and industry level. To reflect local market performance, an index should contain a percentage of the market's overall capitalization sufficient to achieve a high level of tracking. The greater the coverage, however, the greater the risk of including securities which are illiquid or have restricted float. MSCI's 60% coverage target seeks to balance these considerations.

Within the overall target of 60% market coverage, MSCI aims to capture 60% of the capitalization of each industry group, as defined by local practice. MSCI believes this target assures that the index reflects the industry characteristics of the overall market and permits the construction of accurate industry indices.

MSCI may exceed the 60% of market capitalization target in the index for a particular country because, *e.g.*, one or two large companies dominate an industry. Similarly, MSCI may underweight an industry in an index if, *e.g.*, the companies in such industry lack good liquidity and float, or because of extensive cross-ownership.

Liquidity is measured by trading value, as reported by the local exchanges. Trading value is monitored over time to determine "normal" levels exclusive of short-term peaks and troughs. A stock's liquidity is significant not only in absolute terms (*i.e.*, a determination of the market's most actively traded stocks), but also relative to its market capitalization and to average liquidity for the country as a whole.

Float, or the percentage of shares freely tradeable, is one measure of potential short-term supply. Low float raises the risk of insufficient liquidity. MSCI monitors float for every security in its coverage, and low float may exclude a stock from consideration. However, float can be difficult to determine. In some markets good sources generally are not available. In other markets, information on smaller and less prominent issues can be subject to error and time lags. Government ownership and cross-ownership positions can change over time, and are not always made public. Float also tends to be defined differently depending on the source. MSCI seeks to maximize float. As with liquidity, float is an important determinant, but not a hard-and-fast screen, for inclusion of a stock in, or exclusion of a stock from, a particular index.

Cross-ownership occurs when one company has an ownership position in another. In situations where cross-ownership is substantial, including both companies in an index can skew industry weights, distort country-level valuations and overrepresent buyable opportunities. An integral part of MSCI's country research is identifying cross-ownerships to avoid or minimize inclusion of both companies in an index. Cross-ownership cannot always be avoided, especially in markets where it is prevalent. When MSCI makes exceptions, it seeks to select situations where the constituents operate in different economic sectors, or where the subsidiary company makes only a minor contribution to the parent company's results.

MSCI attempts to meet its 60% coverage target by including a representative sample of large, medium and small capitalization stocks, to capture the sometimes disparate performance of these sectors. In the emerging markets, the liquidity of smaller issues can be a constraint. At the same time, properly representing the lower capitalization end of the market risks overwhelming the index with names. Within these constraints, MSCI strives to include smaller capitalization stocks, provided they exhibit sufficient liquidity.

Calculation Methodology

All MSCI Indices are calculated daily using Laspeyres' concept of a weighted arithmetic average together with the concept of "chain-linking," a classical method of calculating stock market indices. The Laspeyres method weighs stocks in an index by their beginning-of-period market capitalization. Share prices are "swept clean" daily and

adjusted for any rights issues, stock dividends or splits. The MSCI Indices currently are calculated in local currency and in U.S. dollars, without dividends and with gross dividends reinvested (*e.g.*, before withholding taxes).

In respect of developed markets, MSCI Indices with dividends reinvested constitute an estimate of total return arrived at by reinvesting one-twelfth of the month end yield at every month end.

In respect of emerging markets, MSCI has constructed its indices with dividends reinvested as follows:

- In the period between the ex-date and the date of dividend reinvestment, a dividend receivable is a component of the index return.
- Dividends are deemed received on the payment date.
- To determine the payment date, a fixed time lag is assumed to exist between the ex-date and the payment date. This time lag varies by country, and is determined in accordance with general practices within that market.
- Reinvestment of dividends occurs at the end of the month in which the payment date falls.

Price and Exchange Rates

Prices used to calculate the MSCI Indices are the official exchange closing prices. All prices are taken from the dominant exchange in each market. In countries where there are foreign ownership limits, MSCI uses the price quoted on the official exchange, regardless of whether the limit has been reached.

MSCI uses WM/Reuters Closing Spot Rates for all developed and emerging markets except those in Latin America. The WM/Reuters Closing Spot Rates were established by a committee of investment managers and data providers, including MSCI, whose object was to standardize exchange rates used by the investment community. Exchange rates are taken daily at 4 p.m. London time by the WM Company and are sourced whenever possible from multi-contributor quotes on Reuters. Representative rates are selected for each currency based on a number of "snapshots" of the latest contributed quotations taken from the Reuters service at short intervals around 4 p.m. WM/Reuters provides closing bid and offer rates. MSCI uses these to calculate the mid-point to 5 decimal places.

MSCI continues to monitor exchange rates independently and may, under exceptional circumstances, elect to use an alternative exchange rate if the WM/Reuters rate is believed not to be representative for a given currency on a

particular day. Because of the high volatility of currencies in some Latin American countries, MSCI continues to use its own timing and sources for these markets.

Changes to the Indices

In changing the constituents of the indices, MSCI attempts to balance representativeness versus undue turnover. An index must represent the current state of an evolving marketplace, yet minimize turnover, which is costly as well as inconvenient for managers.

There are two broad categories of changes to the MSCI Indices. The first consists of market-driven changes such as mergers, acquisitions, bankruptcies, etc. These are announced and implemented as they occur. The second category consists of structural changes to reflect the evolution of a market, including changes in industry composition or regulations. In the emerging markets, index restructurings generally take place every 12 to 18 months. Structural changes may occur only on four dates during the year: the first business days of March, June, September and December. They are preannounced at least two weeks in advance.

Restructuring an index involves a balancing of additions and deletions. To maintain continuity and minimize turnover, MSCI is reluctant to delete index constituents, and its approach to additions is correspondingly stringent. As markets grow because of privatizations, investor interest, or the relaxation of regulations, index additions (with or without corresponding deletions) may be needed to bring industry representations up to the 60% target. Companies are considered not only with respect to their broad industry, but also with respect to their subsector, so as to reflect if possible a broader range of economic activity. Beyond industry representativeness, new constituents are selected based on the criteria discussed above, i.e. float, liquidity, cross-ownership, etc.

In general, new issues are not eligible for immediate inclusion in the MSCI Indices because their liquidity remains unproven. Usually, new issues undergo a "seasoning" period of one year to 18 months between index restructurings until a trading pattern and volume are established. After that time, they are eligible for inclusion, subject to the criteria discussed above.

In the emerging markets, however, it is not uncommon that a large new issue, usually a privatization, comes to market and substantially changes the country's industry profile. In exceptional

circumstances, where an issue's size, visibility and investor interest assure high liquidity, and where excluding it would distort the characteristics of the market, MSCI may decide to include it immediately in an Index. In other cases, MSCI may decide not to include a large new issue even in the normal process of restructuring, and in spite of substantial size and liquidity.

MSCI's primary concern when considering deletions is the continuity of the Indices. Of secondary concern are the turnover costs associated with deletions. The Indices must represent the full investment cycle, including bear as well as bull markets. Out-of-favor stocks may exhibit declining price, market capitalization or liquidity, and yet continue to be good representatives of their industry.

Companies may be deleted because they have diversified away from their industry classification, because the industry has evolved in a different direction from the company's thrust, or because a better industry representative exists (either a new issue or an existing company). In addition, in order not to exceed the 60% target coverage of industries and countries, adding new index companies may entail corresponding deletions. Usually such deletions take place within the same industry, but there are occasional exceptions.

3. Criteria for Initial and Continued Listing

Because of the open-end nature of Funds issuing Index Fund Shares, the Exchange believes it is necessary to maintain appropriate flexibility in connection with the listing of Index Fund Shares of a particular Fund or series thereof. In connection with initial listing, the Exchange will establish a minimum number of Index Shares required to be outstanding at the time of commencement of Exchange trading. For each series of Index Fund Shares, it is anticipated that a minimum of the equivalent of three Creation Units will be required to be outstanding when trading begins.

Each series of Index Fund Shares will be subject to the initial and continued listing criteria of Rule 1002A(b) which provides that following the initial twelve month period following commencement of Exchange trading of a series of Index Fund Shares, the Exchange will consider suspension of trading in, or removal from listing of, such series under any of the following circumstances:

(a) if there are fewer than 50 beneficial holders of the series of Index

Fund Shares for 30 or more consecutive trading days; or

(b) if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or

(c) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

The Exchange will require the Index Fund Shares be removed from listing upon termination of the Fund that issued such shares.

4. Trading Halts

Prior to commencement of trading in Index Fund Shares, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set for in Rule 918C(b) in exercising its discretion to halt or suspend trading. These factors would include: (1) for Index Fund Shares based on a domestic stock index, whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value; (2) for Index Fund Shares based on a foreign stock index, whether trading has been halted or suspended market-wide in the applicable foreign market; or (3) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

5. Terms and Characteristics

Prior to commencement of trading of a series of Index Fund Shares, the Exchange will distribute to Exchange members and member organizations an Information Circular calling attention to characteristics of the specific series and to applicable Exchange rules. The circular also will inform member organizations regarding any applicable requirements for delivery of a prospectus to investors. The Amex has stated that any broker-dealer handling transactions for customers in WEBS will have an obligation to deliver to such customers a prospectus regarding WEBS pursuant to the requirements of the Securities Act of 1933.⁵

⁵ Amendment No. 1, *supra* note 2. The Amex also states that in the event that it obtains an exemption from the prospectus delivery requirements in the future with respect to WEBS or to the other series of Index Fund Shares listed on the Exchange, the Exchange will consult with Commission staff and will file any necessary rule changes. *Id.*

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 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 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 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 in

the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-Amex-95-43 and should be submitted by December 27, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority⁶
Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-29691 Filed 12-5-95; 8:45 am]
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[Release No. 34-36526; File No. SR-PSE-95-28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Establishing a Hedge Exemption for Narrow-Based Index Options

November 29, 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 November 1, 1995, the Pacific Stock Exchange, Inc., ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 PSE proposes to amend PSE Rule 7.6, "Position Limits for Index Options," to establish a hedge exemption from industry (narrow-based) index option position limits which would allow PSE members and member organizations, as well as public customers, to exceed the established position limits for narrow-based index options by three times the established position limit for such index options, provided that the position is "hedged" with shares of at least 75% of the number of stocks comprising the index.¹

⁶ 17 CFR 200.30-3(a)(12) (1994).

¹ Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (i.e., aggregating long calls and short puts or long

The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

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 aspect of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The purpose of the proposed rule change is to establish a hedge exemption from the industry index option position limits established in PSE Rule 7.6(a).² Specifically, the PSE proposes to add Commentary .03 to PSE Rule 7.6, which will provide that industry index option positions may be exempt from established position limits for each contract "hedged" by an equivalent dollar amount of the underlying component securities or securities convertible into such components, provided that each option position to be exempted is hedged by a position in at least 75% of the number of component securities underlying the index, and that the underlying value of the option position does not exceed the value of the underlying portfolio. The value of the portfolio is: (a) the total market value of the net stock position,

puts and short calls). The PSE's proposal is identical to a proposal submitted by the Philadelphia Stock Exchange, Inc. ("PHLX"). See Securities Exchange Act Release No. 36380 (October 17, 1995), 60 FR 54403 (October 23, 1995) (File No. SR-PHLX-95-45).

² PSE Rule 7.6(a) provides the following position limits for industry index options: 5,500 contracts if, during the Exchange's semi-annual review, the Exchange determines that any single stock in the group accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the review; 7,500 contracts if the Exchange determines that any single stock in the group accounted, on average, for 20% or more of the index value for that any five stocks in the group together accounted, on average, for more than 50% of the index value, but that no single stock in the group accounted, on average, for 30% or more of the index value, during the 30-day period immediately preceding the review; or 10,500 contracts if the Exchange determines that the above conditions have not occurred.

less (b) the national value of (1) any offsetting calls and puts in the respective index option; and (2) any offsetting positions in related stock index futures.³ The values of any such index option position or related futures position are determined by aggregating the national value of each option contract comprising the position. Under the proposed exemption, position limits for any hedged industry index option may not exceed three times the limits established under PSE Rule 7.6(a).

Members, member organizations, and public customers seeking to use the proposed exemption must obtain prior Exchange approval. In addition, the exemption requires that both the option and stock positions be initiated and liquidated in an orderly manner. Specifically, a reduction of the option position must occur at or before the corresponding reduction in the stock portfolio position.

Under the proposal, exercise limits will continue to correspond to position limits, so that investors may exercise the number of contracts set forth as the position limit, as well as those contracts exempted by the proposal, during five consecutive business days.⁴

Currently, PSE Rule 7.6, Commentary .02, allows public customers to apply for position limit exemptions in broad-based index options that are hedged with exchange-approved qualified stock portfolios.⁵ Under the broad-based index option hedge exemption, a qualified portfolio is comprised of net long or short positions in common stocks or securities readily convertible into common stock in at least four industry groups and contains at least 20 stocks, none of which accounts for more than 15% of the value of the portfolio. To remain qualified, a portfolio must meet the standards at all time, notwithstanding the trading activity in the stocks or their equivalents.

Although the broad-based index option hedge exemption applies only to public customers, the Exchange believes it is appropriate to expand the availability of the proposed narrow-based index option position limit

³National values are determined by adding the number of contracts and multiplying the total by the multiplier, expressing that number in dollar terms.

⁴Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

⁵See Securities Exchange Act Release Nos. 32900 (September 14, 1993), 58 FR 181 (September 21, 1993) (order approving hedge exemption for broad-based index options on a pilot basis); 35738 (May 18, 1995), 60 FR 27573 (May 24, 1995) (order approving broad-based index option hedge exemption on a permanent basis).

exemption beyond public customers.⁶ The PSE believes that significant increases in the depth and liquidity of these index options could result from permitting firm and proprietary traders to be eligible for the exemption. According to the PSE, because customers rely, for the most part, on a limited number of proprietary traders to facilitate large-sized orders, not including such traders in the exemption effectively reduces the benefit of the exemption to customers. While large-sized positions in industry index options are most commonly initiated by institutional traders hedging stock portfolios on behalf of public customers, the PSE believes that proprietary traders should be afforded the same exemption so that they may fulfill their role as facilitators.

The Exchange believes that its proposed narrow-based index option hedge exemption should not increase the potential for disruption or manipulation in the markets for the stocks underlying each index. The PSE notes that the position limits for narrow-based index options, even tripled, are far less than the position limits for most broad-based index options. In addition, the proposal incorporates several surveillance safeguards, which the Exchange will employ to monitor the use of this exemption. Specifically, the Exchange will require that member firms and their customers who seek exemptions file a form with the PSE, in lieu of granting an automatic exemption similar to that for equity options. The PSE's Options Surveillance Department will monitor trading activity in PSE-traded index options and the stocks underlying those indexes to detect potential frontrunning and manipulation abuses, as well as review to ensure that the closing of positions subject to an exemption is conducted in a fair and orderly manner.

And lastly, the PSE notes that the provision itself contains several built-in safeguards. First, the hedge must consist of a position in at least 75% of the stocks underlying the index, so that the "basket" of stocks constituting the hedge will resemble the underlying index.⁷ Secondly, position limits may

⁶The Exchange proposes to apply only the proposed narrow-based industry index option hedge exemption, and not the existing broad-based index option hedge exemption, to firms and proprietary traders as well as public customers. Telephone conversation between Michael Pierson, Senior Attorney, Market Regulation, PSE, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Commission, on November 14, 1995.

⁷To determine the share amount of each component required to hedge an index option position: index value × index multiplier × component's weighing = dollar amount of

not exceed three times the limit established under PSE Rule 7.6(a). This places a ceiling on the maximum size of the option position. Third, both the options and stock positions must be initiated and liquidated in an orderly manner, such that a reduction of the options position must occur at or before the corresponding reduction in the stock portfolio position. Lastly, the value of the industry index option position may not exceed the dollar value of the underlying portfolio. The purpose of this requirement is to ensure that stock transactions are not used to manipulate the market in a manner benefitting the option position. In addition, these safeguards prevent the increased positions from being used in a leveraged manner.

For the above reasons, the Exchange believes that the proposed narrow-based index option hedge exemption should increase the depth and liquidity of narrow-based index option markets and allow more effective hedging with underlying stock portfolios, without increasing the potential for market manipulation or disruption, consistent with the purposes of position limits. For the same reasons, the Exchange believes that exercise limits should correspond to the position limit exempted granted by this proposal.

Statutory Basis

The PSE believes that the proposal is consistent with Section 6(b) of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PSE 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

Written comments on the proposed rule change were neither solicited nor received.

component. That amount divided by price = number of shares of component. Conversely, to determine how many options can be purchased based on a certain portfolio, divide the dollar amount of the basket by the index value × the index multiplier.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization 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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection any copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 27, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-29685 Filed 12-5-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36532; File No. SR-NASD-95-58]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Date of Implementation of the NASD's Primary Market Maker Standards and the Duration of the Pilot Program for the NASD's Short Sale Rule

November 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 27, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. As discussed below, the Commission has also granted accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Section 19(b)(1) of the Act, the NASD is proposing to delay, from December 1, 1995 to February 1, 1996, the implementation date of the Primary Market Maker standards to be used to determine the eligibility of market makers for an exemption from the NASD's short-sale rule. The NASD also proposes to extend the termination date for the pilot period to August 3, 1996 instead of June 3, 1996. The text of the proposed rule change is as follows (additions are italicized; deletions are bracketed):

Article III, Section 1

* * * * *

Section 48

(1)(3) Until *February 1, 1996* [December 1, 1995], the term "qualified market maker" shall mean a registered Nasdaq market maker that has maintained, without interruption, quotations in the subject security for the preceding 20 business days.

* * * * *

Beginning *February 1, 1996* [December 1, 1995], the term "qualified market maker" shall mean a registered Nasdaq market maker that meets the criteria for a Primary Nasdaq Market Maker as set forth in Article III, Section 49 of the Rules of Fair Practice.

* * * * *

(m) This section shall be in effect until August 3, 1996 [June 3, 1996].

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 NASD 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 NASD 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

On June 29, 1994, the SEC approved the NASD's short-sale rule applicable to short sales in Nasdaq National Market securities on an eighteen-month pilot basis through March 5, 1996.² The NASD's short-sale rule prohibits member firms from effecting short sales at or below the current inside bid as disseminated by the Nasdaq system whenever that bid is lower than the previous inside bid.³ The rule is in effect during normal domestic market hours (9:30 a.m. to 4:00 p.m., Eastern Time). As approved by the Commission, during the first year that the rule has been in effect (from September 6, 1994 to September 6, 1995), Nasdaq market makers who maintained a quotation in a particular Nasdaq National Market security for 20 consecutive business days without interruption are exempt from the rule for short sales in that security, provided that the short sales were made in connection with bona fide market making activity ("the 20-day" test). For the next six months of the 18-month pilot period (*i.e.*, September 6, 1995 through March 5, 1996), the "20-day" test for market maker exemptions from the rule was scheduled to be replaced with a four-part quantitative test known as the "Primary Market Maker (PMM) Standards."

Under the PMM Standards, to be eligible for an exemption from the short-sale rule, a market maker must satisfy at least two of the following four criteria: (1) The market maker must be at the best bid or best offer as shown on the Nasdaq

² See Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994).

³ A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

⁸ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. § 78s(b)(1) (1988).

system no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its "proportionate" volume in stock.⁴ If a market maker is a PMM for a particular stock, there will be a "P" indicator next to its quote in that stock. In addition, market makers will be able to review their status as PMMs through their Nasdaq Workstation. The review period for satisfaction of the PMM performance standards is one calendar month. If a PMM has not satisfied the threshold standards after a particular review period, the PMM designation will be removed commencing on the next business day following notice of failure to comply with the standards. Market makers may requalify for designation as a PMM by satisfying the threshold standards for the next review period.

As noted above, the PMM standards were originally scheduled to go into effect on September 6, 1995. However, because of unforeseen delays in the programming of the PMM standards, the NASD proposed and the SEC approved a delay in the effective date of the PMM standards until December 1, 1995.⁵ With the instant filing, the NASD is proposing a further delay of the implementation date for the PMM standards. Specifically, because of recently detected errors in a segment of the NASD's software used to calculate whether market makers are satisfying the PMM standards, the NASD is proposing to delay the effective date of the PMM standards until February 1, 1996.

With the proposed delay, a market maker's trading activity during the month of January 1996 will be evaluated according to the PMM standards to determine if it can retain its exemption until February 1996. Until January 31, 1996, the 20-day test will continue to be used to evaluate market makers' eligibility for an exemption from the rule. Thus, beginning February 1, 1996, a "P" indicator will be displayed next to every PMM that is exempt from the

rule according to the new PMM standards.

Because implementation of the PMM standards will be delayed under the proposal, the NASD is also proposing to extend the pilot period for the rule so that there is sufficient time to evaluate the effectiveness and impact of the PMM standards and the effectiveness of the short sale rule with the PMM standards in place. Specifically, the NASD proposes to extend the termination date for the pilot program until August 3, 1996.

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6) and 11A(c)(1)(F) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, 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, and to remove impediments to and perfect the mechanism of a free and open market. Section 11A(c)(1)(F) assumes equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities. Specifically, the NASD believes that continuing the operation of the present "20-day" test until the PMM standards are in place will ensure that the liquidity provided to the market by virtue of the market maker exemption will not be diminished. In addition, the NASD believes that continuation of the "20-day" test until the PMM standards are in place would avoid the confusion in the marketplace that would result if the market maker exemption were to lapse for two months and then be reinstated. Finally, the NASD believes that extending the pilot period for the short-sale rule will enhance the quality of studies analyzing the effectiveness of the rule and help to ensure that future regulatory action taken with respect to the rule is based on a greater knowledge and understanding of the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in 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

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 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 NASD 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. The NASD has requested, however, that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the Federal Register.

As discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act. Further, the Commission finds good cause for approving the proposal prior to the 30th day after the date of publication of notice of filing in the Federal Register. The Commission believes that accelerated approval of the proposal is appropriate in that it will permit the NASD to provide interested persons adequate notice that implementation of the PMM standards will be delayed until February 1, 1996 and that the expiration of the short sale rule, including the PMM standards, will be extended until August 3, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

As discussed in the Original Approval Order, the Commission believed and continues to believe that the imposition for a limited time of a short sale rule and accompanying PMM standards applicable to Nasdaq National Market securities is consistent with the requirements of Sections 15A(b) (6), 15A(b) (9) and 15A(b) (11) of the Act.⁶

⁴ Specifically, the proportionate volume test requires a market maker to account for volume of at least one-and-a-half times its proportionate share of overall volume in the security for the review period. For example, if a security has 10 market makers, each market maker's proportionate share volume is 10 percent. Therefore, the proportionate share volume is one-and-a-half times 10, or 15 percent of overall volume.

⁵ See Securities Exchange Act Release No. 36171 (Aug. 30, 1995), 60 FR 46651 (Sept. 7, 1995).

⁶ 15 U.S.C. § 78o-3(b)(6), (9) and (11). Section 15A(b) (6) requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. 15 U.S.C. § 78o-3(b) (6). Sections 15A(b) (9) and (11) require that the NASD's rule be designed not to impose any burden on competition not necessary or appropriate in

As discussed below, the Commission believes that delayed implementation of the PMM standards until February 1, 1996 and limited extension of the short sale rule until August 3, 1996 (rather than June 3, 1996) is consistent with the Act and the rules and regulations promulgated thereunder.⁷

Maintaining the current operation of the short sale rule until the NASD has completed and tested the systems necessary to provide market participants adequate notice of a market maker's PMM status will avoid confusion in the marketplace and assure consistency in the application of NASD rules. Moreover, extension of the short sale rule until August 3, 1996 will maintain the effectiveness of the PMM standards for six months, as envisioned by the Commission's Original Approval Order. As noted in the Original Approval Order, this will provide the Commission and the NASD the opportunity to study the effects of the rule and its exemptions and to determine whether these are practicable and necessary on an ongoing basis, or whether other alternatives would be more appropriate.

In the Original Approval Order, the Commission stated that experience with the NASD's short sale rule may demonstrate that some or all of the elements of the rule require reconsideration. The Commission notes that this is the NASD's second proposal to extend the operation of the short sale rule due to technical problems associated with the implementation of the PMM designation. The Commission is concerned about the delay in implementing the PMM designation which inhibits the ability to assess the effects of the short sale rule with the designation in place and, thus, expects that no further delays will be necessary.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the

furtherance of the Act, *id.* § 78o-3(b) (9), and to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing and publishing quotations. *Id.* § 78o-3(b) (11). In addition, the Commission believes that the rule change will further the goals of Section 11A in that it will promote efficient and effective market operations and economically efficient execution of investor orders in the best market and assure fair competition between the exchange markets and the OTC market and among brokers and dealers. *Id.* § 78k-1(a) (1) (C).

⁷ Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994).

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. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR-NASD-95-58 and should be submitted by December 27, 1995.

VI. Conclusion

For the reasons stated above, the Commission believes the rule change is consistent with the Act and, therefore, has determined to approve it.

It is therefore ordered, pursuant to Section 19(b) (2) of the Act, that the rule change SR-NASD-95-58 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-29686 Filed 12-5-95; 8:45 am]
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[Release No. 34-36524; File No. SR-Phlx-95-76]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Uniform Listing and Trading Guidelines for Narrow-based Stock Index Warrants

November 29, 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 October 27, 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 November 22, 1995, the Phlx submitted Amendment No. 1 ("Amendment No. 1") to the proposal to establish a maintenance requirement with respect to the minimum number of securities that must comprise an index underlying

⁸ 17 CFR 200.30-3(a) (2).

a warrant issuance, to clarify issues relating to settlement values for both narrow-based and broad-based index warrants, and to amend certain position limit levels applicable to narrow-based index warrants.¹ The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rules 722, 803, 1000A, and 1001A to establish uniform listing and trading guidelines applicable to narrow-based stock index warrants. The text of the proposed rule change and Amendment No. 1 thereto is available at the Office of the Secretary, Phlx and at the Commission.

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 Phlx 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 Phlx 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

In view of the recent approval of the regulatory framework for stock index warrants on broad-based stock indexes,² the Exchange now proposes to establish uniform listing and trading guidelines for warrants based on narrow-based indexes. To accommodate the trading of warrants on narrow-based indexes, the Exchange proposes to modify the recently approved regulatory framework for broad-based index warrants.³ Thus, the Exchange proposes to conform the rules applicable to warrants on narrow-based indexes to those applicable to options on narrow-based indexes.

¹ Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, SEC, dated November 22, 1995.

² See Securities Exchange Act Release No. 36167 (Aug. 29, 1995).

³ The Exchange notes that a substantially similar regulatory scheme generally applies to broad-based index options and warrants.

The Commission approved the trading of options on narrow-based indexes in 1982 and it approved the trading of stock index warrants in 1988.⁴ Because the Commission has experience regulating warrants, the Phlx does not believe that the listing of warrants on narrow-based stock indexes will present any novel regulatory issues and, therefore, should be permitted on the same basis as warrants overlying broad-based indexes.

To conform the trading of warrants on narrow-based indexes to the rules applicable to options on narrow-based indexes, the Exchange proposes that the same margin requirements applicable to short sales of narrow-based index options apply to warrants overlying the same index. In addition, the Exchange proposes to apply a position limit structure similar to that which is applicable to narrow-based index options. Accordingly, the Exchange proposes to establish position limits for narrow-based index warrants at three separate, fixed-tier amounts (4,500,000, 6,750,000, and 9,000,000), the applicable level being determined by the level of index component concentration.⁵ These levels are equivalent to 75% of the position limits currently applicable to narrow-based index options. Because broad-based index warrant position limit levels were established at approximately 75% of the corresponding levels for broad-based index options, the Exchange believes it is appropriate to establish narrow-based index warrant position limits at the corresponding level applicable to narrow-based index options.⁶

Also consistent with the existing regulatory framework for broad-based warrants, the issuer may elect to use closing prices for the securities underlying the index to determine settlement values at all times other than the day on which the final settlement value is to be determined ("valuation date"), as well as during the two business days preceding valuation date.⁷ Finally, the Exchange represents

⁴ See Securities Exchange Act Release Nos. 19264 (Nov. 22, 1982) and 26152 (Oct. 3, 1988).

⁵ See Amendment No. 1.

⁶ The position limit tiers have been established at levels that represent 75% of the levels recently approved by the SEC in connection with a Phlx proposal to increase position limits for narrow-based index options. See Securities Exchange Act Release No. 36194 (Sept. 6, 1995). Accordingly, the Exchange proposes that position limits for narrow-based index warrants be set at roughly 75% of the 6,000, 9,000 and 12,000 position limit levels.

⁷ See Amendment No. 1. The Commission notes that although the recently approved regulatory framework for broad-based index warrants establishes uniform settlement provisions for all exchanges, the Phlx in this filing proposes to amend Section 803(e)(3) to clarify its rule language.

that it will not list a warrant on an index consisting of fewer than nine stocks unless the SEC separately approves such index for warrant trading. In addition, the Phlx will impose a maintenance standard that requires an index to have at least nine stocks at all times, unless separately approved by the SEC.⁸

In all other respects, the Exchange represents that the rules applicable to the trading of broad-based and narrow-based index options are the same. Accordingly, it proposes that all other rules applicable to broad-based index warrants apply equally to warrants on narrow-based indexes. Finally, the Exchange represents that it will surveil trading in narrow-based index warrants in a similar manner to the surveillance of trading in broad-based index warrants.

Upon approval of this filing, the Exchange proposes that additional Commission review of a specific narrow-based warrant issuance will be required only for warrants overlying narrow-based indexes that have not previously been approved by the SEC for option or warrant trading. Thus, upon approval of this filing, the Exchange proposes it be permitted to list a warrant on any narrow-based index that the SEC has already approved for option trading.⁹

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will reduce or eliminate a burden on competition by allowing the listing of warrants on narrow-based indexes in the same manner as options on narrow-based indexes.

⁸ See Amendment No. 1.

⁹ In order to expedite SEC review of a particular warrant issuance, the Exchange may file for approval of the index underlying the proposed warrants pursuant to the procedures and criteria set forth in Rule 1009A. These criteria establish streamlined procedures for listing options on stock industry groups (*i.e.*, narrow-based). Accordingly, the Exchange proposes that the same criteria apply to subsequent proposals to establish narrow-based indexes which underlie proposed warrant issuances.

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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-95-76 and should be submitted by December 27, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-29687 Filed 12-5-95; 8:45 am]

BILLING CODE 8010-01-M

¹⁰ 17 CFR 200.30-3(a)(12) (1994).

[Release No. 34-36528; File No. SR-CBOE-95-58]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Listing Standards for Options on Equity Securities Issued in a Reorganization Transaction Pursuant to a Public Offering or a Rights Distribution

November 29, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 19, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE. 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 Chicago Board Options Exchange, Inc. ("CBOE or the Exchange") proposes to amend its listing standards in respect of options on equity securities issued in a spin-off, reorganization, recapitalization, restructuring or similar transaction where the issuance is made pursuant to a public offering or a rights distribution.

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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 CBOE 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

The purpose of the proposed rule change is to amend the special listing standards set forth in Interpretation and Policy .05 under Exchange Rule 5.3 that apply to options on equity securities issued in certain spin-offs, reorganizations, recapitalizations, restructurings or similar transactions (referred to herein as "restructuring transactions") so as to also include securities issued pursuant to a public offering or a rights distribution that is part of a restructuring transaction.

Interpretation and Policy .05 under Exchange Rule 5.3 is intended to facilitate the listing of options on equity securities issued in restructuring transactions (referred to as "Restructure Securities") by permitting the Exchange to base its determination as to the satisfaction of certain of the listing standards set forth in Exchange Rule 5.3 and Interpretation and Policy .01 thereunder by reference to specified characteristics of the "Original Security" in respect of which the Restructure Security was issued or distributed or of the trading market of the Original Security, or by reference to the number of shares of the Restructure Security issued and outstanding or to the listing standards of the exchange on which the Restructure Security is listed. Interpretation and Policy 5.3.05 permits the Exchange to certify a Restructure Security as options eligible sooner than if it had to wait until it could base its certification on characteristics of the Restructure Security itself, but only in circumstances where the factors relied upon make it reasonable to conclude that the Restructure Security will in fact satisfy applicable listing criteria.

As recently approved by the Commission, CBOE Interpretation and Policy 5.3.05 does not extend to restructuring transactions involving the issuance of a Restructure Security in a public offering or a rights distribution.³ Although these kinds of restructuring transactions were included in Interpretation and Policy 5.3.05 as initially filed, CBOE subsequently amended that filing to eliminate them in order to permit the Commission to approve that filing without having to address the special questions raised by public offerings and rights distributions. At that time it was anticipated that CBOE would file a separate rule change proposing the extension of

Interpretation and Policy 5.3.05 to restructuring transactions that involve public offerings and rights distributions.⁴

The question raised by the proposed extension of Interpretation and Policy 5.3.05 to reorganization transactions involving public offerings or rights distributions reflect that when a Restructure Security is issued in a public offering or pursuant to a rights distribution, it cannot automatically be assumed that the shareholder population of the Restructure Security and the Original Security will be the same. Instead, the holders of a Restructure Security issued in a public offering will be those persons who subscribed for and purchased the security in the offering, and the holders of a Restructure Security issued in a rights distribution will be those persons who elected to exercise their rights. Even in the case of a distribution of nontransferable rights to shareholders of the Original Security, not all such shareholders may choose to exercise their rights. As a result, it cannot be assumed that the Restructure Security will necessarily satisfy listing criteria pertaining to minimum number of holders, minimum public float and trading volume simply because the Original Security satisfied these criteria.

On the other hand, the Exchange believes that the same reasons for wanting to make an options market available without delay to holders of securities issued in reorganizations that do not involve public offerings or rights distributions apply with equal force to securities issued in reorganizations that do involve public offerings or rights distributions, so long as there can be reasonable assurance that the securities satisfy applicable options listing standards. That is, holders of an Original Security who utilize options to manage the risks of their stock positions may well find themselves to be holders of both the Original Security and the Restructure Security following a reorganization because they chose to purchase the Restructure Security in a public offering or to exercise rights in order to maintain the same investment position they had prior to the reorganization. Such holders may want to continue to use options to manage the risks of their combined stock position after the reorganization, but they can do so only if options on the Restructure Security are available. The Exchange

⁴ See Letter from Michael L. Meyer, Attorney, Schiff Hardin & Waite, to Sharon M. Lawson, Assistant Director, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated June 13, 1995 ("File SR-CBOE-95-11 Letter").

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 36020 (July 24, 1995), 60 FR 39029 (July 31, 1995) (order approving CBOE Interpretation and Policy 5.3.05).

believes that it is important to avoid any undue delay in the introduction of options trading in such a Restructure Security in circumstances where there is sound reason to believe that the Restructure Security does in fact satisfy options listing standards.

Accordingly, CBOE proposes to add new paragraph (d) to Interpretation and Policy .05 under Exchange Rule 5.3, to address situations where a Restructure Security is issued pursuant to a public offering or rights distribution. Pursuant to the proposed rule change, the Exchange may certify the Restructure Security as satisfying minimum shareholder and minimum public float requirements on the basis provided for in approved Interpretation and Policy .05(c), only after at least five days of "regular way" trading. Moreover, after due diligence, the Exchange must have no reason to believe that the Restructure Security does not satisfy these requirements. Additionally, in order to base certification on Interpretation and Policy 5.3.05, the closing prices of the Restructure Security on each of the five or more trading days prior to the selection date must be at least \$7.50. Finally, as is required for all underlying securities selected for options trading, trading volume in the Restructure Security must be at least 2,400,000 shares during a period of twelve months or less up to the time the security is so selected.

The effect of the proposed rule change is that a Restructure Security issued pursuant to a public offering or a rights distribution that is part of a reorganization will be eligible for options trading only if it satisfies all of the existing standards applicable to the selection of underlying securities generally, except that (A) the Exchange may assume the satisfaction of the minimum public ownership requirement of 7,000,000 shares and the minimum 2,000 shareholders requirement if (i) either the percentage of value tests of subparagraph (a)(1) of Interpretation and Policy 5.3.05 are met or the aggregate market value represented by the Restructure Security is at least \$500,000,000, and if (ii) the Restructure Security is listed on an exchange or an automatic quotation system having equivalent listing requirements or at least 40,000,000 shares of the Restructure Security are issued and outstanding, and if (iii) after the Restructure Security has traded "regular way" for at least five trading days and after having conducted due diligence in the matter, the Exchange has no reason to believe that these requirements are not met, and (B)

or aggregate market value requirements, the Restructure Security may be deemed to satisfy the minimum market price per share requirement if it has a closing market price per share of at least \$7.50 during each of the five or more trading days preceding the date of selection, instead of having to satisfy this requirement over a majority of days over a period of three months. (In the event the Restructure Security has a closing price that is less than \$7.50 on any of the trading days preceding its selection, it will have to satisfy this requirement on a majority of trading days over a period of three months before it can be certified as eligible for options trading.) For any Restructure Security issued in a public offering or a rights distribution that does satisfy these requirements, the effect of the proposed rule change will be to permit its certification for options trading to take place as early as on the sixth day after trading in the stock commences, instead of having to wait for three months of trading.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 in general, and furthers the objectives of Section 6(b)(5) in particular, by removing impediments to a free and open market in options covering securities issued in public offerings or pursuant to rights distributions as part of restructuring transactions and other similar corporate reorganizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose on any 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 were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 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 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 submission 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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR-CBOE-95-58 and should be submitted by December 27, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-29688 Filed 12-6-95; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 01/71-0364]

Geneva Middle Market Investors, L.P.; Issuance of a Small Business Investment Company License

On Tuesday, August 29, 1995, a notice was published in the Federal Register (Vol. 60, No. 167, FR 44929) stating that an application had been filed by Geneva Middle Market Investors, L.P., at 70 Walnut Street, Wellesley, Massachusetts 02181, with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1995)) for a license to operate as a small business investment company.

Interested parties were given until close of business Wednesday, September 13, 1995 to submit their

⁵ 17 CFR 200.30-3(a)(12).

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. 01/71-0364 on Friday, October 27, 1995, to Geneva Middle Market Investors, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 30, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95-29651 Filed 12-5-95; 8:45 am]

BILLING CODE 8025-01-P

[Application No. 99000192]

**CoreStates Enterprise Capital, Inc.;
Filing of an Application for a License
To Operate as a Small Business
Investment Company**

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1995)) by CoreStates Enterprise Capital, Inc. at 1345 Chestnut Street, Philadelphia, Pennsylvania 19107 for a license to operate as a non-leveraged bank-owned small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder. CoreStates Enterprise Capital, Inc. plans to operate principally within the Mid-Atlantic region of the United States.

The Applicant's full-time management team will consist of Michael F. Donoghue (Director and President), Christine C. Jones (Vice President) and Maureen P. Quinn (Vice President), who collectively will be the "Principals" of the Applicant. The Principals and other officers and employees of CoreStates Bank, N.A., the Applicant's management company, will provide management services to the Applicant.

All of the Applicant's private capital will be provided by CoreStates Bank, N.A. which is wholly owned by CoreStates Financial Corporation, a bank holding company. CoreStates Financial Corporation is a Delaware corporation which has assets in excess of \$29 billion and whose stock is publicly traded and is listed on the New York Stock Exchange. CoreStates

Financial Corporation also has an interest in the following other SBIC's: a 5.9% interest as a limited partner in Meridian Venture Partners through ownership of National State Bank, and a 23.9% interest in Greater Philadelphia Venture Capital Corporation. CoreStates Financial Corporation is a passive investor in each such other SBICs and the Principals are not involved in their operation or management.

The Applicant will begin operations with Regulatory Capital of \$2.5 million and plans to make investments in later-stage middle-market small businesses which operate in relatively stable markets and have a functionally diversified management team, predictable operating cash flow and revenues of at least \$10 million.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Philadelphia, Pennsylvania.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies.)

Date: November 30, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95-29652 Filed 12-5-95; 8:45 am]

BILLING CODE 8025-01-P

Blue Rock Capital, L.P.

**Notice of Filing of an Application for a
License to operate as a Small
Business Investment Company**

[Application No. 99000186]

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1995)) by Blue Rock Capital, L.P. at 511 Twaddell Mill Road, Wilmington, Delaware 19807-1233 for a license to operate as a small business investment company (SBIC) under the

Small Business Investment Act of 1958, as amended, (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder.

The Applicant, Blue Rock Capital, L.P., will be organized as a Delaware limited partnership and its principal area of operation will be the Mid-Atlantic area and the Northeastern United States. Blue Rock Partners, L.P. will be the Applicant's General Partner and the General Partner of Blue Rock Partners, L.P. will be Blue Rock, Inc., a Delaware corporation which is owned by Ms. Virginia G. Bonker and Mr. Terry Collison. The Board of Directors of the Applicant's Corporate General Partner consists of Ms. Bonker, Mr. Collison and Mr. Frederick J. Beste, III. BRC Management Corporation (the "Management Company") will provide management services to Blue Rock Capital, L.P. Ms. Bonker and Mr. Collison will work full time for the Management Company. None of the Applicant's limited partners will own 10 percent or more of the Applicant.

The Applicant will begin operations with Regulatory Capital of \$9.8 million and make early-stage equity investments in privately-held companies with high growth potential in the Mid-Atlantic region. The Applicant will consider investments in small business which focus on information technology, business services, software, and other specialized proprietary technologies.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Wilmington, Delaware.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies.)

Dated: November 30, 1995

Don A. Christensen,

Associate Administrator for Investment

[FR Doc. 95-29653 Filed 12-5-95; 8:45 am]

BILLING CODE 8025-01-P

SOCIAL SECURITY ADMINISTRATION**Employer Based Claims Filing**

AGENCY: Social Security Administration.

ACTION: Notice with request for comments.

SUMMARY: The Social Security Administration's Reinventing Government Phase II initiatives include a proposal to establish a controlled employer-based claims-taking process. The goal of this proposal is to make it easy for retiring employees to file for Social Security retirement benefits through their employer. The purpose of this notice is to solicit from the business community expressions of interest in participating in the pilot phase of this claims-taking process. This expression of interest pertains to the pilot phase only. Upon completion of the pilot, participants will be given the opportunity to decide on future participation. Expressions of interest should include a brief description of the employer's existing retirement process, including specifics such as the number of retirements processed each year, the degree of company assistance to retiring employees during the retirement process and how the gathering of Social Security retirement information could be incorporated into this existing process.

DATES: To be sure your expressions of interest are considered, we must receive them no later than January 22, 1996.

ADDRESSES: Expressions of interest or other comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, Maryland 21235, sent by telefax to (410) 966-2830, sent by E-mail to "regulations@ssa.gov," or delivered to the Division of Regulations and Rulings, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT:

Sandra Steeley, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone (410) 965-8976.

SUPPLEMENTARY INFORMATION: The Clinton administration's Reinventing Government Phase II initiatives, announced on April 12, 1995, include a proposal to provide workers with an alternate way to file their Social Security retirement applications.

Currently, workers can apply for Social Security via the mail, telephone or by visiting one of our 1,300 field offices. Under this proposal, workers would have the additional option of filing for their Social Security retirement benefits through their company's personnel office.

The benefits of this proposal will be explored within a pilot phase. Participation in the pilot will involve a commitment to continue participation for the planned 6 to 12 month duration of the pilot. Upon completion of the pilot, involved businesses will be given an opportunity to express their interest in continuing with or removing themselves from further participation in this claims-taking process based on their assessment of the benefits of the process.

The pilot of this cooperative claims-taking process will be conducted through use of paper forms and applications. SSA plans to use an abbreviated application that would minimize the information gathering process for the employer. Information gathering for each retiring employee by the employer will include about 20 short-answer questions. If the basic information gathered by the employer reveals complexities that require further exploration, SSA will develop these issues during later evidence gathering phases of the application process.

This proposal focuses on service to SSA customers. SSA believes the opportunity for a worker to file for Social Security benefits at the same time that the worker completes his/her employer retirement paperwork provides a convenient "one stop" service for the worker. Additionally, because the intent is to work towards establishing at some time in the future an electronic transfer of such information to us, we envision that we will eventually be able to provide an employer and worker with the actual amount of the worker's retirement benefit without any significant delay after submission of the employee's application. This contemplated electronic transfer would facilitate final settlement of the pension amount payable to the worker in situations involving companies that have integrated pension plans in which a worker's pension amount relates to his/her Social Security benefit.

SSA does not envision the employer as the conduit for reporting by the worker after completion of the initial Social Security application process by the worker. SSA will remain the focal point for such later reporting activities.

Dated: November 21, 1995.

Shirley S. Chater,

Commissioner of Social Security

[FR Doc. 95-29532 Filed 12-5-95; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF STATE**Bureau of Political-Military Affairs**

[Public Notice 2296]

Imposition of Chemical and Biological Weapons Proliferation Sanctions On A Foreign Person

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that a Russian individual has engaged in chemical weapons proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979 (the authorities of which were most recently continued by Executive Order 12924 of August 19, 1994), as amended by the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

EFFECTIVE DATE: November 17, 1995.

FOR FURTHER INFORMATION CONTACT:

Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State (202-647-4930).

SUPPLEMENTARY INFORMATION: Pursuant to Sections 81(a) and 81 (b) of the Arms Export Control Act (22 U.S.C. 2798(a), 2798(b)), Sections 11C(a) and 11C(b) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(a), 2410 (b)), Section 305 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (P.L. 102-182), Executive Order 12851 of June 11, 1993, and State Department Delegation of Authority No. 145 of February 4, 1980, as amended, the United States Government determined that Anatoliy Kuntsevich, a Russian Citizen, has engaged in chemical weapons proliferation activities that require the imposition of the sanctions described in Section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and Section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(c)).

Accordingly, the following sanctions are being imposed:

(A) Procurement Sanction. — The United States Government shall not procure, or enter into any contract for

the procurement of, any goods or services from the sanctioned persons; and

(B) Import Sanction. — The importation into the United States of products produced by Anatoliy Kuntsevich shall be prohibited.

Sanctions on the individual described above may apply to firms or other entities with which that individual is associated. Questions as to whether a particular transaction is affected by the sanctions should be referred to the contact listed above. The sanctions shall commence on November 17, 1995. They will remain in place for at least one year and until further notice.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: November 27, 1995.

Dric D. Newsom,

Assistant Secretary of State for Political-Military Affairs, Acting.

[FR Doc. 29720 Filed 12-5-95; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Security Advisory Committee

AGENCY: Federal Aviation Administration.

ACTION: Notice of Aviation Security Advisory Committee Renewal.

SUMMARY: Notice is hereby given of the renewal of the Aviation Security Advisory Committee.

The Federal Aviation Administrator is the sponsor of the Committee, which consists of 23 member organizations selected by FAA as representative of the overall viewpoint of all aviation users and the objectives of the committee. The committee is a joint Government-aviation industry initiative to improve the efficiency and effectiveness of the aviation security system. The committee provides independent expert advice on the nature and the direction in which FAA may wish to proceed to solve these complex and dynamic problems. The functions of the committee are solely advisory.

The Secretary of Transportation has determined that the information and use of the Aviation Security Advisory Committee are necessary in the public interest in connection with the performance of duties imposed on FAA by law. Meetings of the committee will be open to the public.

Issued in Washington, DC, on November 30, 1995.

E. Ross Hamory,

Executive Director, Aviation Security Advisory Committee.

[FR Doc. 95-29702 Filed 12-5-95; 8:45 am]

BILLING CODE 4910-13-M

Availability of Draft Environmental Impact Statement and Public Hearing; LaGuardia Airport East End Roadway Improvements Project

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to hold a public hearing on a draft environmental impact statement.

SUMMARY: The New York Airports District Office of the Federal Aviation Administration (FAA) announces that the FAA, acting as "Lead Agency" and the New York State Department of Transportation (DOT), acting as a "joint lead agency" have completed the preparation of a Draft Environmental Impact Statement (DEIS) assessing modifications to the roadways serving LaGuardia Airport that have been proposed by the Port Authority of New York and New Jersey. In addition, it is the intent of this notice to inform the public that the FAA and New York State Department of Transportation (DOT) will be conducting a Public Meeting to accept comments on the Draft EIS. The Public Meeting will be held:

Date: January 10, 1996

Time: 4:30 pm to 9:30 pm

Location: LaGuardia Marriott Hotel, 105-05 Ditmars Boulevard, East Elmhurst, Queens, New York

Persons interested in contributing comments on the DEIS are invited to provide them orally at the Public Meeting. In addition, written comments may be submitted to Mr. Philip Brito at the location identified below. Written comments must be received by Mr. Brito, on or before, the end of the formal comment period on February 14, 1996. Comments received after the close of the comment period, but prior to FAA's environmental finding, will be considered by the FAA to the extent practicable. The FAA will issue a Final Environmental Impact Statement that includes corrections, clarifications, and responses to comments on the DEIS.

Copies of the Draft Environmental Impact Statement are available for review at the following locations:

John Dent, Branch Manager, East Elmhurst Public Library, 95-06 Astoria Boulevard, East Elmhurst, NY 11369

Orest Tuka, Branch Manager, Jackson Heights Public Library 35-51 81st Street, Jackson Heights, NY

Andrew Jackson, Branch Manager, Langston Hughes Public Library, 102-09 Northern Boulevard, Corona, NY 11368

Diane Vitale, Branch Manager, Corona Public Library, 38-23 104th Street, Corona, NY 11368

Gary Strong, Director, Queens Borough Public Library, 89-11 Merrick Boulevard, Jamaica, NY 11432

Lynne Pickard, Manager, Environmental Needs Division, Office of Airport Planning and Programming, FAA, APP-600, 800 Independence SW, Washington, DC 20591

Queens Community Board #3, District Manager Mary Sarro, 34-33 Junction Boulevard, Jackson Heights, NY 11372

New York City Department of City Planning, Director Joseph B. Rose, 22 Reade Street, New York, NY 10007

Robert Grotell, Deputy Director, Mayor's Office of Environmental Coordination, 52 Chambers Street, Room 315, New York, NY 10007

Queens Borough President's Office, Mr. Bruce Ley, 120-55 Queens Boulevard, Kew Gardens, NY 11424

FOR FURTHER INFORMATION CONTACT:

Philip Brito, Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530, Phone: 516-227-3800.

Philip Brito,

Manager, New York Airports District Office.

[FR Doc. 95-29703 Filed 12-5-95; 8:45 am]

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RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

[Preemption Determination No. PD-12(R); Docket No PDA-13(R)]

New York Department of Environmental Conservation; Requirements on the Transfer and Storage of Hazardous Wastes Incidental to Transportation

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

APPLICANT: Chemical Waste Transportation Institute.

STATE LAWS AFFECTED: New York Codes, Rules and Regulations (NYCRR), Title 6, Section 372.3(a)(7).

APPLICABLE FEDERAL REQUIREMENTS:

Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180.

MODES AFFECTED: Highway and Rail.

SUMMARY: Federal hazardous material transportation law preempts 6 NYCRR 372.3(a)(7) which restricts hazardous waste transporters' activities at transfer facilities by (1) prohibiting the repackaging of hazardous wastes; (2) requiring an indication on the manifest of a transfer of hazardous wastes between vehicles; and (3) requiring secondary containment for any storage or transfer of hazardous wastes. This decision considers these requirements in the context of highway transportation of hazardous wastes, including transfers between motor and rail carriers. On their face, these requirements apply to all modes of transportation.

The first two requirements are preempted by 49 U.S.C. 5125(b)(1) because they are not substantively the same as provisions in the HMR concerning (1) the packing, repacking, and handling of hazardous material, and (2) the preparation, contents, and use of shipping documents related to hazardous material. The requirement for secondary containment is preempted because it is an obstacle to the accomplishment and carrying out of the HMR's provisions on packaging and segregation. 49 U.S.C. 5125(a)(2).

No party, including the applicant, has requested a determination that Federal law preempts the requirement in 6 NYCRR 373-1.1(d)(1)(xv), also incorporated by reference in 372.3(a)(6), that storage of hazardous wastes incidental to transport may take place only at a transfer facility that is not located on the site of a commercial hazardous waste treatment, storage or disposal facility. Accordingly, no decision is reached with respect to that requirement.

This determination does not consider the definitions of "Storage Incidental to Transport" and "Transfer Incidental to Transport," in 6 NYCRR 364.1(c)(12) and (14), because these definitions do not appear to apply to the NYCRR transfer and storage requirements nor impose any requirements or restrictions on transporters of hazardous wastes.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001, telephone 202-366-4400.

SUPPLEMENTARY INFORMATION:

I. Background

A. Application for Preemption Determination

In September 1993, the Chemical Waste Transportation Institute (CWTI) applied for a determination that the

former Hazardous Materials Transportation Act (HMTA) preempted certain requirements of the New York State Department of Environmental Conservation (NYDEC) applicable to the transfer and storage of hazardous wastes incidental to transportation (generally referred to in this determination as "NYDEC transfer and storage requirements").

In general terms, these requirements impose conditions on the transfer and storage of hazardous wastes "incidental to transport" that, if complied with, exempt the transporter from having to obtain the separate permit required for treatment, storage and disposal (TSD) facilities. As discussed more fully below, CWTI contends that these NYDEC transfer and storage requirements are preempted because they are not "substantively the same as" requirements in the HMR governing (1) the packing, repacking and handling of hazardous materials and (2) the content and use of the manifest which serves as a shipping paper accompanying a shipment of hazardous waste. CWTI also contends that most of the NYDEC transfer and storage requirements constitute an obstacle to the accomplishment and execution of the HMTA and the HMR, because they interfere with, or are not necessary for, the safe and efficient transportation of hazardous waste.

On their face, the NYDEC transfer and storage requirements apply to all modes of transportation. However, CWTI's application and all the comments addressed these requirements only in the context of highway transportation of hazardous wastes, including transfers between motor and rail carriers.

The text of CWTI's application was published in the Federal Register on October 15, 1993, and interested parties were invited to submit comments. 58 FR 53614. The period for public comments was extended when several States initially requested additional time to submit comments, and NYDEC advised it was proposing revisions to its regulations that have eliminated many of the specific requirements challenged by CWTI. 58 FR 65226 (Dec. 13, 1993). Additional time was then allowed for interested parties to comment on these proposed revisions to the NYDEC transfer and storage requirements, including whether requirements proposed to be repealed were being enforced. 59 FR 4312 (Jan. 31, 1994). Later, RSPA reopened the comment period to invite further comments on the effect of preemption on "States' ability to appropriately regulate transporters of hazardous waste under RCRA," as raised in a June 27, 1994

letter to RSPA from the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). 59 FR 40081 (Aug. 5, 1994). The comment period closed September 23, 1994.

Extensive comments were received from NYDEC, ASTSWMO, transporters of hazardous wastes, industry organizations, and the following States: California, Colorado, Connecticut, Maine, Maryland, Massachusetts, Montana, Ohio, and Pennsylvania. Further comments were submitted by CWTI.

B. Transfer Facilities and EPA's Regulations

Hazardous wastes, like many other commodities, are seldom transported in a single vehicle from origin to destination. In issuing a 1980 amendment to its hazardous waste regulations, the Environmental Protection Agency (EPA) noted that

Many transporters own or operate transfer facilities (sometimes called "break-bulk" facilities) as part of their transportation activities. At these facilities, for example, shipments may be consolidated into larger units or shipments may be transferred to different vehicles for redirecting or rerouting. Shipments generally are held at these facilities for short periods of time. The length of time may vary due to such factors as scheduling and weather, but because these facilities are intended to facilitate transportation activities, rather than storage, the time is typically as short as practicable.

Interim final amendments and request for comments, Hazardous Waste Management System, etc., 45 FR 86966 (Dec. 31, 1980)

Commenters on CWTI's application described as a common practice the transfer of hazardous wastes between vehicles, including transferring the contents of one container into another. For example, NCH Corporation referred to transporters who pick up hazardous waste in drums from relatively small generators and then consolidate them into loads that are large enough to be accepted by the permitted recycler or waste treatment facility. Transferring the drummed waste upon delivery to the transfer facility into a tanker truck * * * eliminates the labor-intensive and wasteful unloading, reloading, and management of multiple drums of waste that would otherwise be necessary.

According to the Association of American Railroads (AAR):

It is a common transportation practice for hazardous waste to be transferred from truck to rail. For example, contaminated soil has been trucked from hazardous waste sites to rail sidings for rail delivery to treatment or disposal facilities. Hazardous waste liquids are trucked to sidings for pumping into tank

cars and subsequent delivery to consignees for burying or recycling.

EPA's regulations provide that a transporter who mixes hazardous wastes of "different DOT shipping descriptions by placing them in a single container" must comply with the standards applicable to generators. 40 CFR 263.10(c)(2). Transporters who simply hold hazardous wastes "for a short period of time in the course of transportation," 45 FR 86966, are exempted from EPA's requirements applicable to TSD facilities. Section 263.12 of 40 CFR states that:

A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of § 262.30 [specifying packagings that meet DOT regulations] at a transfer facility for a period of ten days or less is not subject to regulation under parts 270, 264, 265, and 268 of this chapter with respect to the storage of those wastes.

C. NYDEC Transfer and Storage Requirements

In contrast, New York subjects transfer facilities to all the requirements governing TSD facilities, including permits, unless the hazardous waste transporter limits its activities at the transfer facilities as follows:

- *Transfer* of hazardous wastes by a transporter "incidental to transport" is permitted by 6 NYCRR 372.3(a)(7) only if "(i) no consolidation or transfer of loads occurs either by repackaging in, mixing, or pumping from one container or transport vehicle into another[.]; (ii) transfer of hazardous waste from one vehicle to another is indicated on the Manifest as Second Transporter"; and (iii) the transfer or storage areas where sealed containers are transferred from one vehicle to another, or unloaded for temporary storage, are "designed to meet secondary containment requirements" set forth in 6 NYCRR 373-2.9(f).

- *Storage* of hazardous wastes by a transporter "incidental to transport," is allowed by 6 NYCRR 372.3(a)(6) for ten calendar days only if conditions specified in 6 NYCRR 373-1.1(d)(1)(xv) are met. The latter section is contained in New York's Hazardous Waste Treatment, Storage and Disposal Facility Permitting Requirements. It allows the transporter an exemption from the requirement to obtain a TSD permit when it stores manifested shipments of hazardous waste in DOT-authorized packagings for ten calendar days or less, "provided that the transfer facility is not located on the site of any commercial hazardous waste treatment, storage or disposal facility subject to permitting" by NYDEC.

Violations of NYDEC's regulations are punishable by civil and criminal penalties. In addition, a transporter's permit may be revoked or suspended, and the violator may be enjoined from continuing to violate the regulations. N.Y. Env'tl. Conserv. Law. 71-2703.

CWTI does not challenge the condition in § 373-1.1(d)(1)(xv) that storage of hazardous wastes at a transfer facility must be in DOT-authorized containers. While CWTI's application also argued for preemption of several other restrictions in § 373-1.1(d)(1)(xv), concerning the storage of hazardous wastes at transfer facilities (such as daily inspections, a log of receipts and shipments, and facility ownership), these other restrictions have been (1) combined with similar requirements in § 372.3(a), (2) eliminated, or (3) modified for consistency with EPA's regulations. These amendments took effect on January 14, 1995 (60 days after NYCRR filed amendments to 6 NYCRR with the New York Secretary of State on November 15, 1994). N.Y.S. Register, p.14 (Nov. 30, 1994).

The only restriction added by NYDEC's November 1994 amendments to the transfer and storage requirements is the condition that a transfer facility not be located on the site of a commercial TSD facility. CWTI refers to this additional restriction in its March 11, 1994 comments, but neither it nor any other party has discussed the effect of this condition on hazardous waste transporters or argued that this condition is preempted by 49 U.S.C. 5125.

In its application, CWTI also contends that the following definitions in 6 NYCRR 364.1(c), defining terms used in Part 364 (governing Waste Transporter Permits), are also preempted:

(12) "Storage Incidental to Transport" means any on-vehicle storage which occurs enroute from the point of initial waste pickup to the point of final delivery for purposes such as, but not limited to, overnight on-the-road stops, stops for meals, fuel, and driver comfort, stops at the transporter's facility for weekends immediately prior to shipment, or on-vehicle storage not to exceed five days at the transporter's facility for the express purpose of consolidating loads (where such loads are not removed from their original packages or containers) for delivery to an authorized treatment, storage or disposal facility.

(14) "Transfer Incidental to Transport" means any transfer of waste material associated with storage incidental to transport where such material is not unpackaged, mixed or pumped from one container or truck into another.

However, these definitions do not appear to impose any requirements or restrictions on transporters of hazardous

wastes. Moreover, NYDEC has stated that these definitions do not apply to the transfer and storage requirements in 6 NYCRR Part 372 and 373. And CWTI has not indicated that the scope of requirements in Part 364, governing permits for transporters of hazardous wastes, is improperly broadened by these definitions to the extent that transporter permit requirements are preempted by 49 U.S.C. 5125. Accordingly, this determination does not consider these two definitions.

The next part of this decision summarizes the regulation of hazardous wastes as hazardous materials under the HMTA, the criteria for Federal preemption of non-Federal requirements applicable to the transportation of hazardous materials, and RSPA's procedures for issuing administrative determinations of preemption. Part III addresses in detail NYDEC's three restrictions on transfer facilities that have been challenged by CWTI's application and remain in effect following the 1994 amendments to the transfer and storage requirements: (1) The prohibition against repackaging, (2) the requirement to indicate on the manifest any transfer of hazardous waste between vehicles, and (3) the requirement for secondary containment for any storage or transfer of sealed containers.

II. Federal Hazardous Materials Transportation Law

A. Scope of Federal Law and Application to Hazardous Wastes

The HMTA was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." Pub. L. 93-633 § 102, 88 Stat. 2156, amended by Pub. L. 103-272 and codified as revised in 49 U.S.C. 5101. The HMTA "replace[d] a patchwork of state and federal laws and regulations * * * with a scheme of uniform, national regulations." *Southern Pac. Transp. Co. v. Public Serv. Comm'n*, 909 F.2d 352, 353 (9th Cir. 1990). On July 5, 1994, the HMTA was among the many Federal laws relating to transportation that were revised, codified and enacted "without substantive change" by Public Law 103-272, 108 Stat. 745. The Federal law governing the transportation of hazardous material is now found in 49 U.S.C. Chapter 51. Although the HMTA remains applicable to proceedings begun before July 5, 1994, this determination will cite to the preemption criteria presently set forth

in 49 U.S.C. 5125, because Congress made no substantive change.

The HMR, now issued under the 49 U.S.C. 5103(b)(1) mandate that the Secretary of Transportation "prescribe regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce," predate the HMTA. They had their origins in the Explosives and Combustibles Act of 1908, 35 Stat. 554 (chap. 234), and many of the provisions governing motor vehicles carrying hazardous materials were originally issued by the Interstate Commerce Commission under former § 204 of the Interstate Commerce Act. After DOT assumed responsibility for the regulation of hazardous materials, the HMR were continued, but renumbered. 32 FR 5606 (Apr. 5, 1967).

To encourage the nationwide application of uniform requirements, DOT has long encouraged States to adopt and enforce the HMR as State law. Grants are available, under the Motor Carrier Safety Assistance Program (MCSAP) of the Federal Highway Administration (FHWA), to States that enforce the "highway related portions" of the HMR "or compatible State rules, regulations, standards, and orders applicable to motor carrier safety, including highway transportation of hazardous materials." 49 CFR 350.9(a). New York has adopted the HMR "as the standard for classification, description, packaging, marking, labeling, preparing, handling and transporting all hazardous materials," 17 NYCRR 507.4(a)(1)(i), and these incorporated provisions of 49 CFR "apply to all transportation within or through the State of New York." 17 NYCRR 507.7.

Under the MCSAP program, in the year ending September 30, 1995, New York was awarded almost \$3.5 million in grants for enforcement of the HMR and the Federal Motor Carrier Safety Regulations, 49 CFR Parts 350-399. As a condition of receiving MCSAP grant funds in fiscal 1996, New York has certified that it has adopted highway hazardous materials safety rules and regulations that are substantially similar to and consistent with the HMR.

All hazardous wastes are designated "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14)(C), and, as such, hazardous wastes were explicitly required to be "listed and regulated as * * * hazardous material[s] under the Hazardous Materials Transportation Act." 42 U.S.C. 9656(a). See also 49 CFR 171.8 (the term "hazardous material" includes hazardous wastes.) The HMR apply to

the transportation of hazardous wastes by intrastate, interstate and foreign carriers. 49 CFR 171.1(a).

Under the HMR, all hazardous materials (including hazardous wastes) are classified according to their hazard characteristics (flammable, corrosive, etc.) and must be packaged for transportation in containers that meet prescribed design specifications or performance-oriented standards. A package containing hazardous materials must be marked and labeled, and the vehicle or freight container placarded, according to the HMR's requirements. The package also must be accompanied by a shipping paper that properly describes the hazardous material. An EPA manifest (meeting the requirements of 40 CFR part 262) must be prepared for any shipment of hazardous waste, and, if it contains all the information required by DOT, the manifest may be used as the DOT shipping paper. 49 CFR 172.205(a), (h).

In enacting RCRA in 1976, Congress provided that EPA's regulations on transporters of hazardous waste must be consistent with the requirements of the HMTA and the HMR. 42 U.S.C. 6923(b). Accordingly, the EPA regulations on transporters of hazardous wastes adopted in 1980 contain a note to explain that:

EPA and DOT worked together to develop standards for transporters of hazardous waste in order to avoid conflicting requirements. Except for transporters of bulk shipments of hazardous waste by water, a transporter who meets all applicable requirements of 49 CFR parts 171 through 179 and the requirements of 40 CFR 263.11 [concerning an EPA identification number] and 263.31 [concerning cleanup of releases of hazardous wastes] will be deemed in compliance with this part. 40 CFR 263.10, Note.

B. Federal Preemption

A statutory provision for Federal preemption was central to the HMTA. In 1974, the Senate Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). More recently, a Federal Court of Appeals found that uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments which expanded the preemption provisions. *Colorado Pub. Util. Comm'n v. Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). In 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to

the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101-615 § 2, 104 Stat. 3244.

Following the 1990 amendments and the subsequent 1994 codification of the Federal law governing the transportation of hazardous material, in the absence of a waiver of preemption by DOT under 49 U.S.C. 5125(e), "a requirement of a State, political subdivision of a State, or Indian tribe" is explicitly preempted (unless it is authorized by another Federal law) if

(1) complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter or a regulation prescribed under this chapter is not possible; or

(2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

49 U.S.C. 5125(a). These two paragraphs set forth the "dual compliance" and "obstacle" criteria which RSPA had applied in issuing inconsistency rulings prior to the 1990 amendments to the HMTA. While advisory in nature, these inconsistency rulings were "an alternative to litigation for a determination of the relationship of Federal and State or local requirements" and also a possible "basis for an application * * * [for] a waiver of preemption." Inconsistency Ruling (IR) No. 2, Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas, etc. 44 FR 75566, 75567 (Dec. 20, 1979). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978).

In the 1990 amendments to the HMTA, Congress also confirmed that there is no room for differences from Federal requirements in certain key

matters involving the transportation of hazardous material. As now codified, a non-Federal requirement "about any of the following subjects, that is not substantively the same as a provision of this chapter or a regulation prescribed under this chapter," is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

49 U.S.C. 5125(b)(1). RSPA has defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d).

Since 1984, the HMR have also included the provision in 49 CFR 171.3(c) that:

With regard to hazardous waste subject to [the HMR], any requirement of a state or its political subdivision is inconsistent with [the HMR] if it applies because that material is a waste material and applies differently from or in addition to the requirements of [the HMR] concerning:

(1) Packaging, marking, labeling, or placarding;

(2) Format or contents of discharge reports (except immediate reports for emergency response); and

(3) Format or contents of shipping papers, including hazardous waste manifests.

This standard (which has been incorporated by reference in New York's transportation regulations) followed the original preemption provision in the HMTA that, unless DOT granted a waiver,

any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in this chapter [the HMTA], or in a regulation issued under this chapter [the HMR], is preempted.

Pub. L. 93-633 § 112(a), 88 Stat. 2161. New York's regulations specifically recognize that "any requirement of the State or political subdivision thereof which is inconsistent with Federal law or regulations in the field is preempted," and refer to procedures

under which DOT can issue a waiver of preemption. 17 NYCRR 507.1(b).

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. This administrative determination replaced RSPA's process for issuing inconsistency rulings. The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which have been delegated to FHWA. 49 CFR 1.53(b). Under RSPA's regulations, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety. 49 CFR 107.209(a).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the Federal Register. *Id.* Following the receipt and consideration of written comments, RSPA publishes its determination in the Federal Register. See 49 C.F.R. 107.209(d). A short period of time is allowed for filing of petitions for reconsideration. 49 C.F.R. 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n v. Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

Although cases cited by NYDEC and other commenters note the general presumption against preemption, RSPA must consider CWTT's application under the express preemption standards of 49

U.S.C. 5125. For that reason, the issue is not whether "there is a clearly demonstrated compelling need for preemption," as NYDEC asserts, but rather whether the non-Federal requirements, such as the NYDEC transfer and storage requirements, fit the criteria in 49 U.S.C. 5125 for preemption.

The Massachusetts Department of Environmental Protection's Division of Hazardous Materials appears to object to RSPA's procedure for issuing preemption determinations. Massachusetts asserts that RSPA's decision "must be made on the basis of adjudicatory facts, not legislative-type facts." It states that "DOT/RSPA has no authority for law-making with respect to preemption, only law-applying," and that RSPA "must make findings of fact in an adjudicative-type proceeding, and then apply the facts to Congress' preemption standard." However, RSPA disagrees with the position of Massachusetts that a formal, fact-finding process under the Administrative Procedure Act is required. As RSPA has stated, before it issues a determination of preemption, each interested party, including the jurisdiction whose requirements are challenged

has been afforded (1) notice and an opportunity to submit any comments it wished; (2) the opportunity to petition for reconsideration; and (3) the right to judicial review. Due process does not require more. Nor is the Administrative Procedure Act applicable here, since the HMTA does not require RSPA to make a determination of preemption "on the record after opportunity for an agency hearing." 5 U.S.C. 554(a). See *Wong Yang Sun v. McGrath*, 339 U.S. 33 (1950), and *Gardner v. United States*, 239 F.2d 234, 238 (5th Cir. 1956).

Preemption Determination (PD) No. 1, State Bonding Requirements for Vehicles Carrying Hazardous Wastes, decision on petitions for reconsideration, 58 FR 32418, 32420 (June 9, 1993), affirming initial decision, 57 FR 58848 (Dec. 11, 1992), judicial review dismissed, *Massachusetts v. United States Dep't of Transp.*, Civil Action No. 93-1581(HHG) (D.D.C. Apr. 7, 1995), appeal pending, No. 95-5175 (D.C. Cir.).

On August 26, 1994, 49 U.S.C. 5125(d)(1) was amended to require that DOT must issue its decision on an application for a determination of preemption within 180 days after publication in the Federal Register of receipt of the application, or DOT must publish a statement of "the reason why the * * * decision on the application is delayed, along with an estimate of the additional time before the decision is made." Pub. L. 103-311 § 120(b), 108

Stat. 1681. Notice of CWTI's application was first published in the Federal Register on October 15, 1993. However, for the reasons explained above, the comment period was twice extended, later reopened, and finally closed on September 23, 1994. NYDEC's amendments to its transfer and storage requirements were not finalized until November 15, 1994, and did not become effective until January 14, 1995. These facts made it impracticable to issue this decision within 180 days of the Federal Register notice of CWTI's application.

III. Discussion

A. CWTI's Standing to Apply for a Preemption Determination

NYDEC and other States opposing CWTI's application assert that CWTI lacks "standing" to challenge the NYDEC transfer and storage requirements. NYDEC states that, based on CWTI's own statements, none of CWTI's members have been "adversely affected" or "aggrieved by the challenged regulations." According to NYDEC, "no [CWTI] member has demonstrated any actual harm (such as lost profits or penalties for failure to comply)." NYDEC also asserts that, "[s]ince the secondary containment requirement is a facility safety standard, and not a transportation issue, it is inapplicable to CWTI," and none of CWTI's members "have been impaired by the application or enforcement of this requirement in their operations."

The Pennsylvania Department of Environmental Resources and the Montana Department of Health and Environmental Sciences both contend that CWTI has failed to show that the NYDEC transfer and storage requirements have been "applied or enforced" against transporters of hazardous waste in New York. Massachusetts simply states that "CWTI has failed to state an injury for which relief pursuant to HMTA § 1811(a) [now 49 U.S.C. 5125 (a) and (b)] can be granted."

In response, CWTI submitted affidavits by two of its members stating that they do not engage in certain activities within the State of New York because of, as set forth in one affidavit, "the severity of the New York Department of Environmental Conservation regulations and the severity of the penalty for non-compliance." In other comments, private companies indicate they have been complying with the NYDEC transfer and storage requirements. For example, Chemical Waste Management, Inc. attributes the lack of enforcement actions against it to its "conformance

with those standards, which in part is based on our belief that New York would exercise its enforcement prerogative on companies not in compliance." Safety-Kleen states that it has obtained permits, that it would not need in the absence of the NYDEC transfer and storage requirements, in order to permit it to "commingle and repackage our mineral spirits solvents for ultimate transport to our recycle centers."

Section 5125(d) authorizes any person who is "directly affected" by a non-Federal requirement to apply for a determination of preemption. That standard is a simple one; being "affected" means only that the requirement applies to the applicant. The plain words of the statute do not require showing that one is "adversely affected," "aggrieved," or has suffered "injury" or "actual harm." Issues of enforcement (and how the non-Federal requirement is actually applied) are relevant to whether or not there is an "obstacle" to executing and carrying out the Federal law and regulations governing the transportation of hazardous materials. But these issues do not bear on whether the applicant is within the scope of those persons entitled to use the administrative procedure set forth in § 5125(d) for obtaining a preemption determination, *i.e.*, whether the non-Federal requirement applies to the applicant.

Moreover, the question of whether NYDEC's secondary containment requirement is a "facility" or "transportation" requirement cannot be determinative of whether a person to whom that requirement applies has "standing" to ask for a determination of preemption. Where loading, unloading or storage occurs incidental to "the movement of property" in commerce, that activity is within the scope of Federal law governing the transportation of hazardous material and the HMR. *See* 49 U.S.C. 5102(12) (definition of "transportation"). Requirements affecting transportation facilities, and transporters' activities at those facilities, are subject to Federal preemption. *See* IR-28, San Jose, California; Restrictions on Storage of Hazardous Materials, 55 FR 8884, 8889-90 (Mar. 8, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992). Similar requirements affecting a consignee's facility and its handling of hazardous materials at that facility, after transportation has ended, are "beyond the scope of the HMTA," as codified at 49 U.S.C. 5101 *et seq. Id.*; *see also* PD-8(R)—PD-11(R), California and Los Angeles County Requirements Applicable to the On-site Handling and

Transportation of Hazardous Materials, 60 FR 8774, 8777-78 (Feb. 15, 1995) (petitions for reconsideration pending).

CWTI has provided sufficient information to establish that the NYDEC transfer and storage requirements, including the requirement for secondary containment, do apply to its members. Accordingly, it is "directly affected" by those requirements and entitled to submit this application.

B. Claims That RCRA Authorizes the NYDEC Requirements

NYDEC and many of the States that submitted comments on CWTI's application argue that the NYDEC transfer and storage requirements are authorized by the provision in RCRA that:

Nothing in this title [42 U.S.C. § 6921 *et seq.*] shall be construed to prohibit any State or political subdivision from imposing any requirements, including those for site selection, which are more stringent than those imposed by [EPA] regulations.

42 U.S.C. § 6929 (RCRA § 3009).

NYDEC states that this provision "explicitly invites state requirements that are 'more stringent'" than Federal ones, and that "a preemption determination will effectively repeal a basic tenet upon which RCRA is based." Maryland and Pennsylvania concur that "RCRA expressly contemplates that state laws will be different and specialized to each state's concerns. States are only preempted by RCRA if state law is less stringent than RCRA."

Maryland and Pennsylvania further contend that DOT has "no authority * * * to administer or interpret RCRA. Therefore, DOT's construction or interpretation of RCRA is entitled to no weight or deference at all." The Colorado Hazardous Waste Commission similarly states that "RSPA has no expertise in the field of hazardous waste, [and] it should recognize the limits of its jurisdiction and defer to the State of New York in this matter."

The Maine Department of Environmental Protection asserts that more stringent requirements in an EPA-authorized State hazardous waste program take precedence over "HMTA's transportation rules," and that "the preemption criteria under HMTA does not extend into hazardous waste transfer activities." Massachusetts mentions the "special regulatory status of hazardous waste" and also contends that "Congress left the states with their authority to enact requirements governing generation, transportation, storage, treatment and disposal which are more stringent than RCRA." Montana states that a 1982 EPA memorandum "expressed [the]

interpretation that provisions of an authorized State program which are more stringent than the Federal counterparts become a part of the requirements of RCRA, and fully enforceable by the EPA."

The California Department of Toxic Substances Control similarly asserts that "RCRA stands as the minimum standards which States must follow, and Congress did not intend to preempt states from promulgating their own requirements pursuant to RCRA." It argues that NYDEC's "loading and unloading requirements" are authorized by both RCRA § 3009 and "EPA's statutory obligation [in RCRA § 3003, 42 U.S.C. § 6923] to promulgate regulations which are necessary to protect human health and the environment in the transportation of hazardous waste." ASTSWMO also indicates that RCRA empowers States "to create regulatory systems which are more stringent than federal rules," and that "these State rules have been closely analyzed by the USEPA for consistency with federal statute and regulations, * * *

In contrast to the States' arguments, CWTI points to EPA's own statements that it does not examine State hazardous waste transportation requirements for consistency with Federal hazardous material transportation law. CWTI cites EPA's final determination on California's hazardous waste program, 57 FR 32726, 32728 (July 23, 1992), where EPA found that "preemption issues under other Federal laws * * * do not affect the State's RCRA authorization," and an August 17, 1994 letter signed by the Director of EPA's Office of Solid Waste stating that:

A possible issue of preemption under HMTA would not affect the programs's eligibility for RCRA authorization where the preemption concern is unrelated to RCRA authorities. * * * Thus, EPA still believes that the RCRA authorization decisions provide no basis for shielding state regulations touching upon hazardous materials transport from possible preemption challenges raised under the HMTA.

CWTI also argues that the "more stringent than" language in 42 U.S.C. 6929 simply prevents RCRA itself from prohibiting additional State requirements, so that the "more stringent than language" is not sufficient to specifically authorize the NYDEC transfer and storage requirements. According to CWTI, the "more stringent than" language does not prevent *other* Federal statutes from preempting State hazardous waste requirements.

Moreover, CWTI finds that this language applies only to sites of TSD facilities. It quotes a statement by

Senator Bumpers, the sponsor of the 1980 amendment that added the "more stringent than" language to RCRA, that the purpose of that language was to "permit States to establish standards more stringent than Federal standards with regard to the selection of sites for the disposal of hazardous waste material." 125 Cong. Rec. 13,247 (1979).

CWTI contends that State requirements on hazardous waste transporters must not be in conflict with the Federal hazardous material transportation law and the HMR, because RCRA requires that (1) EPA's regulations on transporters must be "consistent with" DOT's requirements, 42 U.S.C. 6923(b), and (2) State hazardous waste programs must be "equivalent to" and "consistent with" EPA's program. 42 U.S.C. 6926(b). CWTI refers to 40 CFR 263.12, under which a transporter "who stores manifested shipments of hazardous waste in containers meeting [DOT packaging] requirements" for no more than 10 days at a transfer facility need not meet other storage facility requirements. For the position that there is no restriction on transporters mixing wastes having the same DOT shipping description, CWTI cites the provision in 40 CFR 263.10 that a transporter who "[m]ixes hazardous wastes of different DOT shipping descriptions by placing them in to a single container" must comply with the standards applicable to generators. CWTI quotes the preamble to later amendments to 40 CFR Part 263, where EPA stated that the "amendments do not place any new requirements on transporters repackaging waste from one container to another (e.g., consolidation of wastes from smaller to larger containers) or on transporters who mix hazardous wastes at transfer facilities." 45 FR 86967 (Dec. 31, 1980). Included with CWTI's application is a March 1, 1990 letter signed by the Director of EPA's Office of Solid Waste stating:

The bulking of characteristic hazardous waste shipments to achieve efficient transportation may result in incidental reduction of the hazards associated with that waste mixture. However, this incidental reduction may not meet the definition of treatment (as defined under 40 CFR Section 260.10) because it is not designed to render the waste nonhazardous or less hazardous. Accordingly, such activity may not require a RCRA permit.

The opposing arguments by the States and CWTI clearly focus the issue of the relationship between Federal preemption under 49 U.S.C. 5125 and State requirements on hazardous waste transporters, under EPA-authorized programs. This same issue was addressed in two of RSPA's prior

determinations concerning transporters of hazardous waste: PD-1(R), above, 57 FR 58848, 58854-55, and PD-2(R), Illinois Environmental Protection Agency's Uniform Hazardous Waste Manifest, 58 FR 11176, 11183 (Feb. 23, 1993). Further comments were specifically invited on this issue in the August 5, 1994 Federal Register notice, which reopened the comment period in response to ASTSWMO's request for an opportunity to discuss "the effect of RSPA [preemption] activities upon States' ability to appropriately regulate transporters of hazardous waste under RCRA." 59 FR 40081.

NYDEC's assertion that "the regulation of intrastate transportation of hazardous materials is a matter of peculiarly local concern" is not consistent with: (1) Congress's direction that hazardous wastes must be "listed and regulated as hazardous material[s]" under the former HMTA, 42 U.S.C. 9656(a); (2) its finding that uniform requirements "are necessary and desirable" for the safe transportation of hazardous materials, Pub. L. 101-615 § 2, 104 Stat. 3244; (3) the mandate that DOT "prescribe regulations for the safe transportation of hazardous material in interstate, intrastate, and foreign commerce," 49 U.S.C. 5103(b)(1); and (4) New York's own adoption of the HMR as State law.

As already noted, the HMR presently apply to all intrastate and interstate transportation of hazardous wastes, 49 C.F.R. 171.1(a), and RSPA has proposed to expand the HMR's coverage to intrastate motor carriers of all hazardous material. See Notice of Proposed Rulemaking in Docket No. HM-200, Hazardous Materials in Intrastate Commerce, 58 FR 36920 (July 9, 1993), correction, 58 FR 38111 (July 15, 1993). (At present, the HMR do not apply to intrastate motor carriers of hazardous material other than hazardous wastes, hazardous substances, marine pollutants, and flammable cryogenics in cargo and portable tanks, 49 CFR 171.1(a).)

Moreover, since the early 1900's, the HMR have applied to wastes that were hazardous in transportation. In 1976, Congress recognized this fact when it enacted RCRA and specifically directed that regulations on hazardous waste transporters must be consistent with the HMR; that requirement, in 42 U.S.C. 6923(b), remains unchanged. Under these circumstances, RSPA cannot agree that there is a "special" status for State regulations on hazardous waste transporters, removing them from preemption under 49 U.S.C. 5125, nor that a declaration that the NYDEC transfer and storage requirements are

preempted "will effectively repeal a basic tenet upon which RCRA is based."

RSPA has, in fact, looked to EPA's own interpretation of RCRA, as requested by some of the State commenters. In its authorization of California's hazardous waste program, EPA stated that permit requirements for waste transportation "facilities not regulated under RCRA would be viewed as 'broader in scope' and, therefore, not part of the authorized program," and that any such requirements could be challenged in an application to DOT "which has jurisdiction over such matters." 57 FR at 32728. Accordingly, preemption issues under Federal hazardous material transportation law do not affect the State's RCRA authorization. * * * EPA does not believe that an individual State's authorization application is the appropriate forum to resolve problems which clearly affect a large number of States. * * * [A] process is already in place intended to address the problem pursuant to the [HMTA].

Id. In October 29, 1992 and August 17, 1994 letters, EPA has reaffirmed this position.

EPA has consistently maintained that its approval of a State's hazardous waste program does not preclude preemption by 49 U.S.C. 5125 of that State's requirements—regardless of whether the latter are deemed "broader in scope" or "more stringent" than Federal RCRA requirements. Section 3009 of RCRA, which allows States to impose "more stringent" requirements than those established by EPA, must be read consistently with Federal hazardous materials transportation law.

A fundamental rule of construction is that two separate statutes should be construed in a manner which is consistent and gives effect to both. *Morton v. Mancari*, 417 U.S. 535, 551 (1974). In this case, Congress clearly intended RCRA to be implemented consistently with the HMTA. The legislative history of RCRA shows that EPA and DOT are to work together to maintain consistent standards for hazardous waste transporters which assure handling of the waste in a manner that (1) protects human health and the environment, and (2) does not interfere with transportation. H.R. Rep. No. 1491, 94th Cong., 2d Sess. 6, 27, reprinted in 1976 U.S. Code Cong. & Ad. News 6238, 6244, 6265.

To carry out that intention, in section 3003(b) of RCRA (42 U.S.C. 6923(B)), Congress encouraged EPA to consult with DOT, and it required EPA to promulgate hazardous waste transportation regulations in consultation with DOT and consistent with the HMTA and the HMR. In 1980,

Congress added section 2002(a)(6) to RCRA that the EPA Administrator may delegate to DOT inspection and enforcement functions relating to the transportation of hazardous waste, "where such delegation would avoid unnecessary duplication of activity and would carry out the objectives of this Act and of the Hazardous Materials Transportation Act." 42 U.S.C. 6912(a)(6) (emphasis added).

EPA's reading of the two statutes gives full effect to both. Under that construction, EPA-authorized State requirements governing hazardous waste transporters that are more stringent than EPA's own regulations are preempted when those requirements fail to meet the standards of 49 U.S.C. 5125. This properly places the power to make hazardous materials transportation preemption decisions with DOT, the agency charged by Congress to administer the Federal hazardous material transportation law.

There is no basis for the position of NYDEC and other States that any State can avoid preemption of its hazardous waste transporter requirements simply by obtaining authorization under RCRA. Similarly unfounded is the assertion by ASTSWMO that EPA actually does (or must) analyze State hazardous waste transportation requirements "for consistency with Federal statute and regulations * * *" during the authorization process. Congress could not have intended that EPA (rather than DOT) assume the burden of determining whether State requirements are consistent with Federal hazardous material transportation law and the HMR.

State requirements affecting transporters of hazardous waste are not "authorized by another law of the United States," within the meaning of 49 U.S.C. 5125, simply because they are contained in an EPA-authorized State hazardous waste program. See PD-1, above, 57 FR at 58855. The statement in 40 CFR 271.1(i), that nothing in EPA's State-authorization regulations "precludes a State from" adopting or enforcing more stringent requirements, is not authorization in an enabling sense. That does not constitute specific authorization of these State requirements, as is necessary to preclude preemption. *Colorado Pub. Util. Comm'n v. Harmon*, above, 951 F.2d at 1581 n.10.

C. NYDEC Transfer and Storage Requirements

1. Repackaging Prohibition

Section 372.3(a)(7)(i) allows a transporter to transfer hazardous wastes incidental to transport provided that

no consolidation or transfer of loads occurs either by repackaging in, mixing, or pumping from one container or transport vehicle into another.

The HMR contain numerous requirements covering loading, unloading, and handling hazardous waste during transportation. See generally 49 CFR 173.1-173.40, Part 174 (railroads), and Part 177 (motor carriers). However, the HMR do not contain any general prohibition against the transfer of hazardous material from one container to another, or the combination of commodities within the same packaging. For example, 49 CFR 173.21(e) forbids mixing of two materials in the same packaging or container when it "is likely to cause a dangerous evolution of heat, or flammable or poisonous gases or vapors, or to produce corrosive materials." In another section, the HMR provide that

Two or more materials may not be loaded or accepted for transportation in the same cargo tank motor vehicle if, as a result of any mixture of the materials, an unsafe condition would occur, such as an explosion, fire, excessive increase in pressure or heat, or the release of toxic vapors.

49 CFR 173.33(a)(2). And 49 CFR 173.10(e) forbids loading certain flammable materials from tank trucks or drums into tank cars on the carrier's property. As mentioned earlier, EPA's regulations provide that a hazardous waste transporter must also follow the requirements applicable to generators if it "[m]ixes hazardous wastes of different DOT shipping descriptions by placing them into a single container." 40 CFR 263.10(c).

With regard to motor carriers only, the HMR prohibit the transfer of a Class 3 (flammable liquid) material between containers or vehicles "on any public highway, street, or road, except in case of emergency." 49 CFR 177.856(d). (The HMR also contain segregation requirements, applicable to rail and motor carriers, limiting which hazardous materials may be "loaded, transported, or stored together." 49 CFR 174.81(f), 177.848(d).)

CWTI asserts that NYDEC's prohibition against repackaging containers of hazardous waste is preempted because it is not substantively the same as the provisions in the HMR concerning "the packing, repacking, [and] handling * * * of

hazardous material," 49 U.S.C. 5125(b)(1)(B), and because it is an obstacle to the HMR. It notes that EPA does not preclude the commingling of hazardous waste by transporters, but merely specifies that a transporter who mixes wastes of different DOT shipping descriptions must comply with standards applicable to waste generators. It argues that States may not treat hazardous wastes differently than "fungible products such as coal, petroleum or acids" that may be repackaged during transportation.

CWTI points to EPA's March 1, 1990 letter, indicating that repackaging of hazardous waste, for transportation, does not constitute treatment for which a permit is required. It states that the absolute prohibition against repackaging restricts transporters from taking actions that actually promote safety, on the basis that it is safer to consolidate loads from cargo tanks to tank cars and to combine the contents of many individual packagings from multiple generators for shipment to a TSD facility.

Other commenters, including Dart Trucking Company and Price Trucking Company, complain that this restriction against repackaging results in additional truck travel, wasted fuel, increased emissions, and the inability to transfer wastes between trucks and railroads. AAR also states that:

It generally is in the public interest to permit truck to rail transfers of hazardous waste. Rail transportation is the best mode of transporting hazardous waste; railroads have a favorable incident rate and no "midnight dumping" problem. Furthermore, rail transportation of hazardous waste to a recycling facility often can be cheaper; heretofore, it has been public policy to make recycling economical.

AAR argues that, because the HMR only prohibit truck-to-rail transfers of certain flammable materials in limited circumstances, NYDEC's absolute ban on transferring hazardous waste is inconsistent with the HMR and therefore preempted.

The Hazardous Materials Advisory Council (HMAC) asserts that hazardous wastes do not have any additional risks that justify NYDEC's "discriminatory regulation" of hazardous wastes differently from other hazardous materials. Safety-Kleen also believes that "the same guidelines that are afforded to all non-waste hazardous materials" should be applied to hazardous waste transporters; it advises that it spends approximately \$500,000 per year to obtain NYDEC TSD permits "in order to commingle and repackage our mineral spirit solvents for ultimate

transport to our recycle centers" outside the State of New York.

CWTI argues that 49 CFR 177.834(h) is not applicable to transfer facilities. That section, applicable only to motor carriers, provides in part that

There must be no tampering with [a] container or the contents thereof nor any discharge of the contents of any container between point of origin and point of billed destination. Discharge of contents of any container, other than a cargo tank, must not be made prior to removal from the motor vehicle.

According to CWTI, this provision covers "illegal activity, such as stealing freight," and "discharges into the environment, not the movement of material between DOT-authorized packagings." Referring to an exchange of correspondence between the Federal Railroad Administration (FRA) and Envirosafe Services of America discussing the application of the HMR to the transfer of hazardous wastes "from gondolas to dump trucks," CWTI notes that FRA never indicated that those transfers were prohibited. NCH Corporation also argues that the "billed destination" may be an intermediate point, such as a transfer facility, and that 177.834(h)

is clearly intended to bar irresponsible handling or diversion of hazardous materials in transportation, not to prevent the orderly transfer of material from one DOT-approved container to another at a transfer facility. * * * The transfer of material from container to container in the ordinary course of business, with no release into the environment, is not a "discharge."

NYDEC acknowledges that "the RCRA uniform manifest system does allow the commingling of wastes" by transporters, while NYDEC's transfer and storage requirements "do not allow consolidation of loads by repackaging, mixing or pumping an any intermediate, non-TSD location short of the RCRA permitted 'billed destination' which the generator specifies." It argues that its prohibition against repackaging is "consistent with and complimentary to" 177.834(h), since both its requirement and the HMR are "aimed at preventing a release of the hazardous material." NYDEC states that the term "billed destination" in 177.834(h) "plainly refers to the ultimate destination," which is the TSD facility from the generator's perspective.

NYDEC further argues that the HMR do not authorize, "either explicitly or implicitly," the commingling of hazardous wastes by transporters, but that 177.834(h)

is obviously directed toward preventing unqualified persons from tampering with packaging and containers. This ensures that

wastes are not commingled, eliminating the identification of the generator and potentially destroying the integrity of the container
* * *

For this reason, NYDEC states that its repackaging prohibition is not an obstacle to accomplishing and carrying out the HMR, but rather furthers the "main objective of HMTA [which] is the safe transport of hazardous materials." According to NYDEC, added costs of doing business do not constitute an "obstacle"; it argues that an obstacle exists "only when the regulations in question require conduct that is prohibited by [49 U.S.C.] Chapter 51 or are incompatible with conduct required by Chapter 51. * * *

California asserts, as does NYDEC, that the NYDEC "loading and unloading" requirement in 6 NYCRR 372.3(a)(7)(i) is not within the list of covered subjects in 49 U.S.C. 5125(b)(1). However, it further states that, if loading and unloading are covered subjects, the NYDEC repackaging prohibition is substantively the same as 177.834(h), because "[t]he two regulations contain the same goal of disallowing the tampering with and discharging of hazardous materials from containers before a transporter reached its destination."

Several of the State commenters contend that the NYDEC prohibition against repackaging is not preempted because it regulates a facility rather than transportation. Maine does

not believe that opening containers of hazardous waste, pouring, pumping, mixing, or commingling are within the realm of transport activities. Such activities constitute hazardous waste management activities and Maine decided long ago that these activities must be conducted at facilities which meet appropriate design standards and in accordance with procedures developed to protect public health, safety, and the environment. We further contend that transfer activities fall under the realm of a storage/management activity and not a transport activity.

Similarly, ASTSWMO stated that opening containers and commingling waste are "management activities," for which there should be "the safeguards of contingency plans, waste analysis plans, trained personnel, sampling, compatibility determinations, etc." The Public Utilities Commission of Ohio (PUCO) also states that,

in light of the fact that there are no Federal standards for hazardous waste facilities, CWTI bears a difficult burden to demonstrate that the NYDEC requirements, as applied or enforced, create an obstacle to the accomplishment and execution of [49 U.S.C. Chapter 51] and the Hazardous Materials Regulations. Generally, where there are Federal standards or regulations, additional

state regulations may run the risk of confusing the regulated industry. With respect to hazardous waste transfer facilities, there are no Federal standards or regulations; therefore, the NYDEC regulations create no risk of confusing the regulated industry.

Both ASTSWMO and PUCO urge RSPA not to find preemption. ASTSWMO believes that "these non-transport issues" should be addressed by EPA in a rulemaking process, rather than by RSPA in a preemption determination. PUCO sees the "need for uniform national standards for hazardous waste transfer facilities" beyond current EPA and DOT requirements, and it asks that RSPA withhold any ruling on CWTI's application until those uniform standards are established. It recommends as a model the procedures being followed under 49 U.S.C. 5119 for establishing uniform State forms and procedures for registration and permitting of hazardous material transporters.

CWTI and other commenters have explained that NYDEC's prohibition against repackaging hazardous wastes prevents transporters from transferring the contents of many drums into a cargo tank, from transferring the contents of several cargo tanks into a tank car (or from dump trucks into a gondola or hopper car), and from transferring the

contents from rail cars into trucks. EPA has disclaimed any "intention of discouraging rail transportation of hazardous wastes," and stated that 1980 amendments to its regulations specifically allow "intermodal transportation involving railroads without the need for a manifest accompanying the waste during the rail portion of the shipment." Transportation of Hazardous Waste by Rail, 45 FR 86970, 86971 (Dec. 31, 1980). Intermodal shipments of hazardous wastes in bulk cannot take place without the "repackaging, mixing, or pumping" prohibited by NYDEC's section 372.3(a)(7)(i).

By its very terms, this prohibition involves "repackaging," and is not substantively the same as the HMR's requirements for "the packing, repacking, [and] handling * * * of hazardous material." 49 U.S.C. 5125(b)(1)(B). The prohibited repackaging activities fall within the scope of "repacking" and "handling," specifically because they involve "loading" and "unloading." DOT has never interpreted 49 CFR 177.834(h) as a general prohibition against transferring hazardous materials from one approved container to another. This is confirmed by the limited prohibition,

covering only flammable liquids, against transfer from one container or vehicle to another on a "public highway, street, or road," subject to an exception with prescribed procedures for emergency situations. 49 CFR 177.856(d).

There is also no indication that New York State (which has adopted both 177.834(h) and 177.856(d) as State law) has interpreted the former section to restrict either (1) combining the contents of several packages of fungible commodities or (2) transferring materials between modes of transportation. Section 177.834(h) must also be understood in light of the historical practice, recognized in EPA's March 1, 1990 letter interpretation, that transporters may consolidate or mix hazardous wastes of the same DOT shipping description without thereby engaging in "treatment" (for which a permit is required) or becoming subject to the regulations applying to hazardous waste generators.

NYDEC's attempt to characterize the repackaging prohibition in 6 NYCRR 372.3(a)(7)(i) as a "facility" requirement also cannot insulate it from preemption. That prohibition applies to the "repackaging" and "handling" of hazardous materials in transportation, and it is not substantively the same as

the requirements in the HMR. For that reason, 49 U.S.C. 5125(b)(1)(B) preempts 6 NYCRR 372.3(a)(7)(1). In addition, NYDEC's prohibition against repackaging containers of hazardous waste appears to be inconsistent with the HMR because it applies solely to waste material "and applies differently from or in addition to" the HMR's requirements concerning the packaging of hazardous materials. 49 CFR 171.3(c)(1).

2. Manifest Entry for Transfer Between Vehicles

Section 372.3(a)(7)(ii) allows a transporter to transfer hazardous wastes incidental to transport provided that transfer of hazardous waste from one vehicle to another is indicated on the Manifest as Second Transporter.

The HMR require that a hazardous waste manifest be prepared in accordance with EPA's regulations in 40 CFR 262.20 and be "signed, carried, and given" as specified in 49 CFR 172.205. A manifest which contains all the information required by DOT may be used as the DOT shipping paper. 49 CFR 172.205(h). Procedures for use of the manifest when wastes are shipped by railroad, including transfers between rail and non-rail carriers, are specifically set forth in 40 CFR 263.20(f), and allow a shipping paper to

accompany the shipment (rather than the manifest).

EPA's Uniform Hazardous Waste Manifest form is shown in the Appendix to 40 CFR Part 262. Among the information required are the company name and EPA identification number for the first and second (if necessary) transporters. (If more than two transporters will be used to transport the waste, a continuation sheet must be used to "list the transporters in the order they will be transporting the waste. * * * Every transporter used between the generator and the [TSD] designated facility must be listed.") In a shaded portion, for information "not required by Federal law," are spaces for the State identification number and telephone number of any transporter. In these spaces, NYDEC requires "State of registration and motor vehicle license plate number of waste carrying portion of vehicle used to transport" plus "[t]elephone number of authorized agent." 6 NYCRR Part 372, Appendix 30. On the lower portion of the form are spaces for the transporter(s) to acknowledge receipt of the hazardous waste, by name, signature, and date.

RSPA has found that any State requirement that "significantly alter[s] the information supplied on the manifest," is preempted. PD-2(R), above, 58 FR at 11183 (preempting Illinois requirement to round quantities

of hazardous waste to the nearest whole numbers, while the uniform manifest form specifying entry of the "total quantity" of hazardous waste may require the use of fractions or decimals, depending on the unit of measure).

Neither EPA's regulations nor the HMR contain any requirement for a single transporter to indicate, by license plate number or otherwise, which vehicle is used to carry the hazardous waste, or that waste has been transferred from one vehicle to another.

CWTI argues that NYDEC's requirement to indicate on the manifest when waste is transferred from one vehicle to another is not substantively the same as the HMR's requirements for "the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents." 49 U.S.C. 5125(b)(1)(C). It asserts that a EPA negotiated rulemaking committee "specifically considered and rejected an effort to require notation by license plate number" when vehicles of the same transporter were changed.

AAR states that rail cars are usually transferred between carriers "without face-to-face contact," and "shipping paper information may be exchanged between carriers electronically." According to AAR, railroads are

excepted from the signature requirements, "including shipments which ultimately are transferred between the rail and truck modes," citing 40 CFR 263.20(f) and 49 CFR 172.205(f).

NYDEC did not specifically address the requirement in 6 NYCRR 372.3(a)(7)(ii) that the manifest show any transfer of hazardous waste from one vehicle to another owned by the same transporter. Its written comments indicate this requirement was among those being eliminated, but this requirement was retained in the amendments filed November 15, 1994.

In coordinated, but separate, rulemakings in March 1984, EPA and DOT summarized the development of a uniform hazardous waste manifest form. EPA, Hazardous Waste Management System, 49 FR 10490; RSPA Docket No. 145D, Hazardous Waste Manifest; Shipping Papers, 49 FR 10507 (Mar. 20, 1984). As EPA indicated, when it established the manifest system in 1980, it decided to allow "the regulated community to adapt its present practices, notably DOT's requirements for shipping papers, to accommodate the new EPA requirements." 49 FR 10490 (footnote omitted). Accordingly, EPA specified only "the required

information that must accompany the waste," and did not require a particular format. *Id.*

The lack of a standard form soon resulted in a "proliferation of manifests as various States decided to develop and print their own forms," burdening both generators and transporters. *Id.* Based on recommendations by ASTSWMO and HMAAC, and the consideration of approximately 300 comments to the two agencies, EPA and DOT amended their separate regulations to require use of a uniform manifest, effective in September 1984. At the time, they indicated that, "[u]nder limited circumstances, States may impose [additional] information or management requirements,"—but only on the waste generator. 49 FR at 10492. As stated by EPA:

States are prohibited from applying enforcement sanctions on the transporter during the transportation of hazardous waste for any failure of the form to show optional State information entries. States may hold transporters responsible only for ensuring that the information included in the federally-required portions of the Uniform Manifest form accompanies the shipment.

Id. DOT's preamble similarly stated that, "no State may require a carrier to provide information with or on the

manifest which is in addition to that authorized by the uniform manifest system." 49 FR 10508. Both agencies noted that States could require generators to send other information "under separate cover," 49 FR at 10492," or "directly to the appropriate agency of [the] State * * * [c]onsidering that the conventional means of transmitting data by mail, wire, telephone and other means are very reliable and readily available." 49 FR at 10506.

Neither RCRA nor EPA's regulations authorize a State to require on the manifest an indication that hazardous wastes have been transferred between vehicles owned or operated by the same transporter. The manifest must contain only the transporter's "company name" and EPA identification number. 40 CFR Part 262, Appendix. The HMR also contain no requirement to identify a shipment with a particular vehicle. For this reason, the requirement in 6 NYCRR 372(a)(7)(ii) that the transporter indicate, on the manifest, any "transfer of hazardous waste from one vehicle to another," is preempted because it is not "substantively the same as" the HMR's requirements for "the preparation, execution, and use of shipping

documents related to hazardous material and requirements related to the number, contents, and placement of those documents." 49 U.S.C. 5125(b)(1)(C). In addition, NYDEC's requirement for indicating the second vehicle on the manifest appears to be inconsistent with the HMR because it applies solely to waste material "and applies differently from or in addition to" the HMR's requirements concerning the "contents of shipping papers, including hazardous waste manifests." 49 CFR 171.3(c)(3).

3. Secondary containment

Section 372.3(a)(7)(iii) allows a transporter to transfer hazardous wastes incidental to transport provided that if consolidation of loads takes place by moving containers from one transport vehicle to another or containers are removed from transport vehicles prior to being reloaded, the transfer or storage area must be designed to meet secondary containment requirements in accordance with subdivision 373-2.9(f) of this Title.

The containment system specified in section 373-2.9(f) includes requirements for an impervious base, drainage (unless containers are elevated), capacity limits, prevention of run-on into the containment system, and timely removal of spills or accumulated precipitation—except that containers of wastes that do not contain

free liquids (other than certain acute hazardous wastes) need only be stored where there is drainage or the containers are elevated or otherwise protected from contact with accumulated liquid.

The HMR do not contain any requirements concerning the physical design or construction of fixed facilities where transporters may exchange hazardous materials between vehicles, including intermodal operations. Rather, the HMR focus on the suitability of the container and proper handling activities. Accordingly, 49 CFR 173.24(b) requires that:

Each package used for the shipment of hazardous materials under this subchapter shall be designed, constructed, maintained, filled, its contents so limited, and closed, so that under conditions normally incident to transportation—(1) * * * there will be no identifiable (without the use of instruments) release of hazardous materials to the environment; [and] (2) The effectiveness of the package will not be substantially reduced; for example, impact resistance, strength, packaging compatibility, etc. must be maintained for the minimum and maximum temperatures encountered during transportation.

Cargo tanks and tank cars must be built to specifications and periodically retested and reinspected. See 49 CFR 180.407 (cargo tanks), 180.509 (tank cars). Specific procedures, and attendance requirements, apply to the

unloading of both tank cars and cargo tanks. 49 CFR 174.67 (tank cars), 177.834 (cargo tanks). Separation and segregation requirements also exist to prevent mixing of incompatible materials. 49 CFR 174.81 (rail cars), 177.848 (motor vehicles).

CWTI contends that NYDEC's requirement for secondary containment is "a direct challenge to the integrity of DOT packaging standards." According to CWTI, the HMR were based on "the premise that packagings can be built to contain hazards under conditions normal to transportation." It states additional requirements in the HMR supplement this central premise: segregation and separation requirements, prohibitions on certain types of materials transported, and requirements for immediate notification of any spills, the clean up of any discharge, and financial responsibility for environmental restoration. CWTI also refers to the requirement in 49 CFR Part 130 for shippers and transporters of petroleum oils (including hazardous wastes containing these oils) in containers larger than 3,500 gallons to prepare response plans.

CWTI states that normal industry practice is to perform loading, unloading, and storage of hazardous wastes "on impervious surfaces," but that "requirements for sloping and spill/run-off containment are unnecessary." It

further asserts that both DOT and EPA have determined that there is no need for secondary containment requirements at hazardous waste transfer facilities, alluding to the absence of any such requirements in both agency's regulations. CWTI places special significance on EPA's failure to impose additional requirements after it specifically requested comments in the preamble to its December 31, 1980 rulemaking. With respect to a change to 40 CFR 263.12, EPA stated:

The amendments provide that the hazardous wastes being held at transfer facilities must be in containers (including tank cars and cargo tanks) which meet DOT specifications for packaging under 49 CFR 173, 178 and 179. This provision should ensure that the hazardous waste remains properly packaged during this phase of transportation. Although the Agency believes that this requirement should provide adequate protection of human health and the environment during the short period that hazardous wastes are held at a transfer facility, we solicit comments on whether additional requirements should be imposed, such as contingency plans, personnel training, and inspections. Comments are specifically requested on which, if any, of the [TSD facility] Part 265 requirements should be placed on transporters who hold shipments of hazardous waste for ten days or less.

Interim final amendments and request for comments, Hazardous Waste Management System, etc., 45 FR 86966, 86967 (Dec. 31, 1980).

NYDEC argues that the focus of Federal hazardous materials transportation law is "explicitly limited to 'transportation' issues," while its requirements for secondary containment are "facility requirements which establish minimum safety standards for transfer facilities, and, contrary to CWTI's assertion, are not intended to be a challenge to the integrity of DOT packaging standards." NYDEC also contends that these "facility standards, rather than impairing the transportation of hazardous materials, serve to advance what DOT has described as the 'manifest purpose of the HMTA' by promoting 'safety in the transportation of hazardous materials.'" (Quoting from IR-2, Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas, 44 FR 75566, 75571 (Dec. 20, 1979), decision on appeal, 45 FR 71881 (Oct. 30, 1980).)

According to NYDEC, the secondary containment requirement "advances HMTA's goal of safety in the transportation of hazardous materials by ensuring that hazardous materials which may inadvertently escape from

leaking or ruptured containers do not enter the environment, where they are likely to present a risk to human health or the environment." Maine similarly asserts that:

Absorbent pads and drip pans do not provide the same measure of security that is present at a permitted facility. Facility standards such as impervious surfaces combined with slopes and spill containment provide an extra measure of environmental protection that cannot be achieved by allowing this activity to be regulated under HMTA as a transportation activity.

The Connecticut Department of Environmental Protection also believes that DOT packaging standards alone will not "guarantee that hazardous materials will not leak or otherwise be released from their package." It cites two incidents "involving containers that failed while in the course of transportation," but acknowledges that "both shippers utilized containers that did not meet DOT specification/standards and/or met DOT standards/specification but were still improperly packed * * *" It further states that shippers often put hazardous wastes into "used containers since the material has negative value," and that human errors cause releases from containers that meet DOT's specifications or standards.

Connecticut notes that EPA requires secondary containment for TSD facilities, and claims that "wastes are more likely to be repacked at transfer facilities rather than virgin materials." It also comments that transfers actually take place "both on and off impervious surfaces and with or without secondary containment," and that remedial measures are not sufficient when "the damage has already been done." PUCO states that the existing industry practice to load, unload and store hazardous wastes on impervious surfaces:

Demonstrates the need for a national uniform standard to ensure that all hazardous waste transporters are engaging in these activities in a safe, efficient manner. The need for, and the type of, secondary containment mechanism can be established through the rulemaking process.

As already discussed in connection with NYDEC's arguments on "standing," subpart III.A. above, the definition of "transportation" in 49 U.S.C. 5102(12) brings transportation-related loading, unloading and storage of hazardous materials within the scope of Federal hazardous materials transportation law, including the preemption provisions in 49 U.S.C. 5125. There is no difference in this regard where these transportation-related activities take place, and non-Federal requirements are not somehow

immunized from preemption simply because they purport to apply to what the transporter does at a "facility." As noted in *Consolidated Rail Corp. v. Bayonne*, 724 F. Supp. 320, 330 (D.N.J. 1989), the "extent of federal regulation in the area of the transportation, loading, unloading and storage of hazardous materials is comprehensive" (holding that the HMTA preempted a city limitation on the number of loaded or unloaded butane rail cars permitted on a storage and blending facility).

Two prior inconsistency rulings confirm that non-Federal requirements that purport to regulate "facilities" are subject to preemption when those requirements affect the transportation-related loading, unloading and storage of hazardous materials. In the first, RSPA found that a prohibition against holding hazardous materials for more than 48 hours at a railroad yard without a permit was found to be inconsistent with the HMR which allow retention for up to 120 hours, if there are intervening weekends and holidays. IR-19, Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials, 52 FR 24404, 24406, 24409 (June 30, 1987), decision on appeal, 53 FR 11600 (Apr. 7, 1988). In subsequent litigation, the Ninth Circuit considered the same requirement and reversed a lower court holding that the HMR did

not address the "storage of hazardous materials." *Southern Pac. Trans. Co. v. Public Serv. Comm'n*, above, 909 F.2d at 356.

In the other ruling, RSPA considered San Jose, California's requirements for secondary containment and segregation of hazardous materials at a motor carrier's transfer facility. IR-28, above. In arguments similar to those presented by NYDEC and other States, the city argued that its ordinance "regulates storage only and that it does not regulate transportation nor purport to do so." 55 FR at 8887. However, RSPA found that San Jose's "requirements *per se* present consistency problems when they are applied to storage of hazardous materials incidental to their transportation." 55 FR at 8893.

State or local imposition of containment or segregation requirements for the storage of hazardous materials incidental to the transportation thereof different from, or additional to those in [49 CFR] § 177.848(f) of the HMR create confusion concerning such requirements and the likelihood of noncompliance with § 177.848(f). Since such state or local requirements, therefore, are obstacles to the execution of an HMR provision, they are inconsistent with the HMR * * *

Id.

In the same fashion, NYDEC fails to achieve its asserted goal of promoting

safety in the transportation of hazardous materials because its secondary containment requirement creates confusion as to requirements in the HMR and increases the likelihood of noncompliance with the HMR. To the extent that States perceive the need for a uniform national standard requiring secondary containment at transfer facilities, the appropriate course is to petition RSPA to add this requirement to the HMR in accordance with 49 CFR 106.31. The secondary containment requirement in 6 NYCRR 372.3(a)(7)(iii) is preempted by 49 U.S.C. 5125(a)(2).

IV. Ruling

For the reasons set forth above, Federal hazardous material transportation law preempts NYDEC's transfer and storage requirements at 6 NYCRR 372.3(a)(7). Subsection (i), prohibiting the repackaging of hazardous wastes, concerns the packing, repacking and handling of hazardous materials, and it is not substantively the

same as the HMR. 49 CFR 5125(b)(1)(B). Subsection (ii), requiring an indication on the manifest of a transfer of hazardous wastes between vehicles, concerns the preparation, use and contents of shipping documents related to hazardous material, and it is not substantively the same as the HMR. 49 U.S.C. 5125(b)(1)(C). Subsection (iii) of 6 NYCRR 372.3(a)(7), requiring secondary containment for the transfer or storage of hazardous wastes at transfer facilities, is preempted because it is an obstacle to the accomplishment and carrying out of the HMR's provisions on packaging and segregation. 49 U.S.C. 5125(a)(2).

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), "[a]ny person aggrieved" by this decision may file a petition for reconsideration within 20 days of service of this decision. Any party to this proceeding may seek review of

RSPA's decision "in an appropriate district court of the United States * * * not later than 60 days after the decision becomes final." 49 U.S.C. 5125(f).

This decision will become RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of service, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, D.C. on November 30, 1995.

Alan I. Roberts,
*Associate Administrator for Hazardous
Materials Safety.*

[FR Doc. 95-29648 Filed 12-5-95; 8:45 am]

BILLING CODE 4910-60-P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 234
Wednesday, December 6, 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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, December 7, 1995, 11:00 a.m.
LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Part Open to the Public; Part Closed.

CHILDREN'S SLEEPWEAR: The staff will brief the Commission on final amendments of the children's sleepwear flammability standards to exempt tight fitting sleepwear garments and sleepwear garments intended for children younger than six months of age. A final portion of the briefing will be held in closed session for discussion of issues related to enforcement of the children's sleepwear standard.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: December 1, 1995.
Sadye E. Dunn,
Secretary.
[FR Doc. 95-29907 Filed 12-4-95; 2:59 pm]
BILLING CODE 6355-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 7, 1995.

PLACE: Room 600, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Thunder Basin Coal Co.*, Docket Nos. WEST 94-148-R, WEST 94-303. (Issues include whether the judge erred in concluding that section 109(a) of the Mine Act does not require mine bulletin board posting of an Order of Temporary Reinstatement.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFOR: Jean Ellen (202) 653-5629 / for toll free TDD Relay 1-800-877-8339.

Dated: November 30, 1995.
Jean H. Ellen,
Chief Docket Clerk.
[FR Doc. 95-29857 Filed 12-4-95; 1:45 pm]
BILLING CODE 6735-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, December 12, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6485A—Marine Accident Report: Engineroom Fire On Board Liberian Tankship SEAL ISLAND, While Moored at Dock No. 3 at Amerada Hess Oil Terminal, St. Croix, U.S. Virgin Islands, October 8, 1994
6635—Aviation Briefs of Accidents/ Incidents: 1995 File Nos:
593—Cambridge, Massachusetts February 22, 1995

766—Stevenson, Alabama April 27, 1995
5016—Dallas/Ft. Worth International Airport February 27, 1995

NEWS MEDIA CONTACT: Telephone: (202) 382-0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: December 1, 1995.
Bea Hardesty,
Federal Register Liaison Officer.
[FR Doc. 95-29785 Filed 12-1-95; 4:26 pm]
BILLING CODE 7533-01-P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE: 2:30 p.m., Monday, December 18, 1995.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, N.W., Suite 800, Board Room, Washington, D.C. 20005.

STATUS: Open/Closed.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/ Secretary 202/376-2441.

AGENDA:

- I. Call to Order
- II. Approval of Minutes:
September 20, 1995, Regular Meeting
- III. Budget Committee Report:
November 6, 1995, Meeting
a. Proposed FY 1996 Budget Revisions
- IV. Treasurer's Report
- V. Executive Director's Quarterly Management Report
- VI. Personnel Committee Report:
November 6, 1995, Closed Meeting
- VII. Adjourn

Jeffrey T. Bryson,
General Counsel/Secretary.
[FR Doc. 95-29838 Filed 12-4-1:42 pm]
BILLING CODE 7570-01-M

Federal Register

Wednesday
December 6, 1995

Part II

**Environmental
Protection Agency**

40 CFR Part 122, et al.
**National Pollutant Discharge Elimination
System Permit Application Requirements
for Publicly Owned Treatment Works and
Other Treatment Works Treating Domestic
Sewage; Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 122, 123, 403, and 501**

[FRL-5328-9]

National Pollutant Discharge Elimination System Permit Application Requirements for Publicly Owned Treatment Works and Other Treatment Works Treating Domestic Sewage**AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today proposes to amend permit application requirements and application forms for publicly owned treatment works (POTWs) and other treatment works treating domestic sewage (TWTDS). TWTDS include facilities that generate sewage sludge, provide commercial treatment of sewage sludge, manufacture a product derived from sewage sludge, or provide disposal of sewage sludge. Today's notice solicits public comments on the proposed regulations, proposed forms and instructions.

The proposed regulations and Form 2A would replace existing Standard Form A and Short Form A to account for changes in the NPDES program since the forms were issued in 1973. This proposal would consolidate POTW application requirements, including information regarding toxics monitoring, whole effluent toxicity (WET) testing, pretreatment facility and hazardous waste contributions, and combined sewer overflows (CSOs). The most significant proposed revisions would require toxic and WET monitoring by major and pretreatment POTWs and monitoring of 17 parameters by minor POTWs. EPA believes this information is needed in order for permitting authorities to issue permits that will adequately protect the Nation's water resources.

The proposed regulations and Form 2S would replace the existing Interim Sewage Sludge form. The most significant proposed revision would require POTWs and other TWTDS to analyze sludge and provide data for ten metals, nitrogen, and phosphorus. Class I sludge management facilities (pretreatment POTWs) would also have to analyze for most of the priority pollutants. The Interim Form only requires the use of existing data. EPA believes the additional information is needed in order for permitting authorities to issue permits that meet the requirements of the sewage sludge use or disposal regulations.

The costs associated with the new requirements are not significant since many permitting authorities require essentially the same information already through a variety of reporting mechanisms. The proposed rule allows waivers where information is already available to the permitting authority. The new forms would make it easier for permit applicants to provide the necessary information with their applications and would minimize the need for additional follow-up information requests from permitting authorities. The proposal is estimated to reduce the current annual reporting and record keeping burden by about 9,000 hours, or ten percent. EPA is interested in identifying additional ways to further reduce the burden associated with the applications and is seeking comment on the use of electronic data transmission and other streamlining opportunities.

DATES: In order to be considered, comments must be received on or before March 5, 1996.

ADDRESSES: Comments should be addressed to Municipal and Sludge Application Rule Comment Clerk, Water Docket MC-4101; United States Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. Commenters are also requested to submit an original and 3 copies of their written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand by March 5, 1996. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) March 5, 1996. EPA is experimenting with electronic commenting, therefore commenters may want to submit both electronic comments and duplicate paper comments. This document has also been placed on the Internet for public review

and downloading at the following location: gopher.epa.gov.

FOR FURTHER INFORMATION CONTACT: For information on Form 2A and municipal wastewater permitting issues in this notice, contact George Utting, (202) 260-9530, Permits Division (4203), United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C., 20460.

For information on Form 2S and sewage sludge permitting issues in this notice, contact Wendy Bell, (202) 260-9534, Permits Division (4203), United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C., 20460.

SUPPLEMENTARY INFORMATION:**I. Background**

- A. Purpose of Today's Proposal
- B. History of the NPDES Permit Program
 1. National Pollutant Discharge Elimination System
 - a. Federal Water Pollution Control Act Amendments of 1972
 - b. Changes Leading to the Clean Water Act of 1977
 - c. Permit Consolidation and Deconsolidation
 - d. The Water Quality Act of 1987 and Water Quality-Based Permitting
 2. Background of the Pretreatment Program
 3. Program to Control Combined Sewer Overflows
- C. Sewage Sludge Program Background
 1. Statutory Requirements for Sewage Sludge
 2. Sewage Sludge Permit Program Regulations
 3. Part 503 Technical Standards
 4. Implementation of Part 503 Technical Standards
 5. Interim Sewage Sludge Application Form
- D. NPDES Watershed Strategy
- E. Permit Writer's Information Needs Related to Endangered Species and Historic Properties
- F. Permit as a Shield
- G. Pollutant Data from POTWs
- H. Public Consultation in the Development of Today's Proposal

II. Approach Taken in Today's Notice

- A. Scope of Today's Rulemaking
- B. The Agency Proposes to Revise the Definition of POTW and Existing Permit Application Requirements for POTWs
- C. EPA Proposes Form 2A for POTWs to Replace Standard Form A and Short Form A
- D. Applicability of Form 2A to Privately Owned and Federally Owned Treatment Works
- E. EPA Proposes Revised Application Requirements and Form 2S for Sewage Sludge Permits
- F. Reasons for Separate Form 2A and Form 2S
- G. EPA Solicits Comment on the Use of Electronic Application Forms

III. Description of Proposed Requirements

- A. EPA Proposes to Revise Requirements in § 122.21(c), (d), and (f) Concerning the Use of Forms 1, 2A, and 2S

1. Requirement to Submit Form 2A
2. Requirement to Submit Form 2S
- B. Application Requirements for POTWs (40 CFR 122.21(j))
 1. Basic Application Information
 2. Information on Effluent Discharges
 3. Effluent Monitoring for Specific Parameters
 - a. Pollutant Data Requirements for all POTWs
 - b. Reporting of Additional Pollutants for Some POTWs
 4. Effluent Monitoring for Whole Effluent Toxicity
 5. Industrial Discharges, Pretreatment, and RCRA/CERCLA Waste
 6. Discharges from Hazardous Waste Sources
 7. Combined Sewer Overflows
 8. Contractors
 9. Certification
 - C. Application Requirements for TWTDS (40 CFR 122.21(q))
 1. Facility Information
 2. Applicant Information
 3. Permit Information
 4. Federal Indian Reservations
 5. Topographic Map
 6. Sewage Sludge Handling
 7. Sewage Sludge Quality
 - a. Class I Sludge Management Facilities
 - b. All TWTDS
 8. Requirements for a Person Who Prepares Sewage Sludge
 9. Land Application of Bulk Sewage Sludge
 10. Surface Disposal
 11. Incineration
 12. Disposal in a Municipal Solid Waste Landfill
 13. Contractors
 14. Other Information
 15. Signature
- IV. Paperwork Reduction Act
- V. Executive Order 12866
- VI. Executive Order 12875
- VII. Unfunded Mandates Reform Act of 1995 and Consultation with State, Local, and Tribal Governments
- VIII. Regulatory Flexibility Act

I. Background

A. Purpose of Today's Proposal

Today's notice proposes to amend NPDES permit application regulations for publicly owned treatment works (POTWs) and other treatment works treating domestic sewage (TWTDS). Proposed Form 2A would apply to POTWs and replace Standard Form A and Short Form A, which were developed in 1973. Proposed Form 2S would be used to report sewage sludge information consistent with applicable permit program regulations and technical standards for sewage sludge use or disposal. Proposed Form 2S would be used by POTWs and other TWTDS.

EPA proposes these application regulations and forms for several reasons. First, this rulemaking addresses changes to the NPDES program since 1973. The NPDES program applicable to

POTWs has changed significantly since that time, specifically in the areas of toxics control, water quality-based permitting and pretreatment programs. Second, the proposal would consolidate application requirements from existing regulations into a "modular" permit application form, thereby streamlining and clarifying the process for permit applicants. Third, these revisions will provide permit writers with the information necessary to develop appropriate NPDES permits consistent with requirements of the Clean Water Act and thus also help to ensure for permittees the effectiveness of the permit as a shield for purposes of compliance with the CWA. Fourth, the Agency seeks to reduce redundant reporting by allowing waivers where information is already available to the permitting authority and, further, to provide a platform for electronic data transmission.

The proposed revisions would result in a net reduction in overall reporting burden hours nationwide. The burden reduction for the combined municipal and sludge proposed application requirements is calculated to be nearly 9,000 hours annually, from a total existing annual burden of 80,000 hours. This is due in part to the reduced number of WET tests calculated to be performed by POTWs. It is also due to the reduced number of major respondents that would be required to comply with the proposed regulations as compared to the number of major respondents estimated to complete the existing municipal application forms (i.e., different criteria apply). Finally, the respondent burden for CWA sec. 308 application requests also would be expected to decrease, because much of the information currently obtained through routine and medium sec. 308 requests is reflected in the proposed rule.

This burden reduction accounts for nearly 9,000 of the 287,000 hours projected to be saved, for an overall reduction of twenty-five percent for the NPDES program. The total savings will be achieved through revisions to this form, revisions to stormwater application forms, revisions to the industrial application form 2C, and reductions in discharge monitoring reports (DMRs). It is anticipated, however, that most of the NPDES burden reduction will involve reduced burden for DMRs, which currently account for greater than eighteen million annual burden hours.

At the same time, this proposed rule would result in increased net costs to municipal and sludge applicants of more than four million dollars per year

on a nationwide basis. It is calculated that this proposal would apply to more than 7,000 permit applications per year, with a total universe per year of more than three thousand applicants each for municipal and sludge permitting. Costs vary considerably from application to application. Thus, the average five-year cost per application would range from an average of about \$450 (less than \$100 per year) for small municipalities to an average of about \$4,000 (less than \$1,000 per year) for larger municipalities. Most of the costs associated with this proposal would be due to proposed pollutant data requirements for municipal permittees.

The Agency believes that the proposed increased costs are appropriate because certain data may be necessary to the permit writer in order to allow the issuance of permits that provide a "shield" to permittees (see discussion, "Permit as a Shield," at I.F.), and to ensure compliance with Clean Water Act requirements, especially water quality standards.

B. History of the NPDES Permit Program

1. National Pollutant Discharge Elimination System

a. Federal Water Pollution Control Act Amendments of 1972

The Clean Water Act (CWA) was enacted in 1972 (Federal Water Pollution Control Act Amendments of 1972) to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. CWA sec. 101(a), 33 U.S.C. 1251(a). The immediate predecessor to the CWA was the Water Quality Act of 1965 (Pub. L. 89-234). The 1965 Act directed each State to develop water quality standards for all interstate navigable waters. States had difficulty developing these standards, however, and by 1971 barely half the States had developed complete programs. States that did develop standards had difficulty implementing them because the 1965 Act lacked a workable mechanism for translating State water quality standards into limits enforceable against individual dischargers.

In response to this dilemma, Congress passed the CWA. Section 402 directed EPA to assume a substantial role in directing and defining the nation's water pollution control programs. The Act established the National Pollutant Discharge Elimination System (NPDES) permit program to be administered by EPA and the States with EPA approval. The NPDES program prohibits the discharge of any pollutant into waters of the United States except when

authorized by a permit (sec. 301(a) and 402).

Section 301 significantly changed the methods used to set and enforce standards to abate and control water pollution. First, it introduced the concept of minimum technology-based discharge requirements. Initially, sec. 301(b)(1)(B) required POTWs to achieve effluent limitations based on secondary treatment. The "degree of effluent reduction achievable through application of secondary treatment" was to be defined by the Administrator, pursuant to sec. 304(d)(1). Later, POTWs were to achieve a more stringent level of technology-based discharge limits based on best practicable waste treatment technology (BPWTT) under sec. 301(b)(2)(B). That section was repealed in 1981. Finally, POTWs were required to comply with any more stringent limitations necessary to implement any applicable State water quality standards. Water quality-based discharge limitations were imposed by sec. 301(b)(1)(C).

To achieve the effluent reductions called for in sec. 301, sec. 402 provides for the NPDES permit program to implement and enforce these controls. NPDES permits may be issued on the condition that authorized discharges meet the applicable requirements of the CWA, including: technology-based limitations; water quality-based limitations; new source performance standards; toxic and pretreatment effluent standards; inspection and monitoring provisions; and ocean discharge criteria. EPA was authorized to issue regulations to implement these provisions throughout the CWA. NPDES permit requirements are based either on regulations promulgated under these sections or, in the absence of regulations, on the permit writer's best professional judgment (BPJ), when necessary to carry out the provisions of the CWA. CWA sec. 402(a)(1), 33 U.S.C. 1342(a)(1). The CWA also authorized States to assume responsibility for issuing NPDES permits, provided that State programs meet the requirements of sec. 402(b) and regulations published under sec. 304(i)(2) (previously, sec. 304(h)(2)). EPA promulgated the original regulations outlining the NPDES program on December 22, 1972 (37 FR 28390) and May 22, 1973 (38 FR 13528).

The CWA required the Administrator to promulgate guidelines for "establishing uniform application forms and other minimum requirements for the acquisition of information" from point sources, within 60 days after its enactment. CWA sec. 304(i)(1) (previously, sec. 304(h)(1)). EPA

promulgated short forms to enable dischargers to meet deadlines imposed by the CWA, on February 27, 1973 (38 FR 5279). These included Short Form A, which was to be completed by all POTWs. EPA promulgated standard forms to gather additional information from certain dischargers, on July 24, 1973 (38 FR 19894). This rule included Standard Form A, for POTWs meeting certain criteria relating to size, population, and industrial contributions. At the time, there were no effluent standards for POTWs. Secondary treatment regulations, setting limits for biochemical oxygen demand, suspended solids, fecal coliform, and pH, were not promulgated until August 17, 1973 (38 FR 22298).

b. Changes leading to the Clean Water Act of 1977

The first major change in the NPDES program's focus was the shift from conventional to toxic pollutants. Though sec. 307(a) required EPA to identify and establish effluent standards for toxic pollutants, the thrust of the "first round" of NPDES permits was to control conventional pollutants, rather than to identify and establish standards for toxic pollutants. As the NPDES program was implemented, several interested parties criticized the Agency's lack of progress in establishing sec. 307(a) standards. Among the terms in settlement of litigation in 1976, EPA was to establish technology-based standards as necessary to address 65 compounds or classes of compounds for certain industries. See *NRDC v. EPA*, 8 E.R.C. 2120 (D.D.C. 1976). This list of 65 compounds is now contained in 40 CFR 401.15.

In 1977, amendments to the Clean Water Act refocused Agency priorities on the control of toxic pollutants. As a result, the NPDES program expanded beyond control of conventional pollutants to control of nonconventional pollutants, such as ammonia, chlorine, and nitrogen, as well as certain metals and organic chemicals. The list of the 65 compounds was incorporated into sec. 307 when the CWA was amended in 1977 (see Committee Print Number 95-32, Hearings before the Subcommittee on Investigations and Review of the Committee on Public Works and Transportation, U.S. House of Representatives, pages 399-405) and subsequently was published on January 31, 1978 (43 FR 4109). The compounds on the list were chosen according to various criteria, including known occurrence in point source effluents and substantial evidence of carcinogenicity in studies of humans or animal systems. Because the list included broad

categories or classes of chemicals (e.g., chlorinated benzenes, DDT and metabolites, haloethers, etc.), EPA restructured the list in order to evaluate and control the specific pollutants of greatest concern. This produced a list of 129 individual high priority toxic pollutants. As information became available regarding the toxic effects of chemicals on the list, the Agency amended the regulations to establish the current list of 126 "priority pollutants." See 40 CFR Part 423, Appendix A. The 1977 amendments also amended sec. 402(b)(8)&(9) to require that approved State NPDES programs provide for administration of the pretreatment program to regulate industrial users of POTWs.

In 1979, EPA extensively revised the NPDES regulations to implement changes in the CWA, to conform to recent court decisions, and to clarify and improve existing procedures. The 1979 regulatory revisions eliminated duplication of substantive and procedural requirements between the existing State and Federal NPDES program regulations. Under the final regulations, promulgated on June 7, 1979 (44 FR 32854), the basic substantive and procedural requirements applicable to all NPDES permits were set out in Parts 122 and 124. Part 123 established State NPDES permit program requirements. EPA believed that this new regulatory structure would simplify the regulations and avoid inconsistencies between State and Federal programs. These regulations were challenged judicially and, as discussed below, petitions for review were merged with and resolved in litigation challenging the consolidated permit regulations and subsequent rulemakings.

c. Permit Consolidation and Deconsolidation

To simplify permitting programs, EPA published regulations on May 19, 1980 (45 FR 33290), to consolidate the requirements and procedures for five of the permit programs administered by the Agency: the NPDES program, the Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA), State "dredge or fill" programs under sec. 404 of the CWA, the Hazardous Waste Management (HWM) program under the Resource Conservation and Recovery Act (RCRA), and the Prevention of Significant Deterioration (PSD) program under the Clean Air Act. The Agency believed it would be efficient to consolidate environmental permitting programs wherever feasible. This effort sought to

eliminate gaps and overlaps and ensure consistency among the programs.

At the same time, EPA revised certain of the permit application regulations. The Agency created three new application forms: Form 1, Form 2B, and Form 2C. Form 1 requires general information about permit applicants and was required to be completed by applicants for each of the five types of permits under the consolidated permit rule. Form 2B is specific to part of the NPDES program, specifically, permit applications for concentrated animal feeding operations and aquatic animal production dischargers. Form 2C, also specific to the NPDES program, applies to manufacturing, commercial, mining, and silvicultural operations. All three forms incorporated EPA's emphasis on toxic pollutants and other modifications to the CWA and NPDES program regulations.

Following promulgation of the consolidated permit regulations, interested parties complained that the consolidated format made the regulations unnecessarily difficult to use. The division of responsibilities among various entities at the State and Federal levels resulted in additional problems. In practice, consolidated processing of multiple permits was rare because the various permit programs regulated different activities with different standards and thus imposed different types of requirements on permittees. Subsequent petitions for judicial review of various aspects of the consolidated permit regulations were consolidated with pending petitions for review of the June 7, 1979, final NPDES regulations in the United States Court of Appeals for the District of Columbia Circuit.

As part of an agreement to resolve that litigation, and in response to problems encountered by permit writers, EPA deconsolidated the five permitting programs on April 1, 1983 (48 FR 14146). The NPDES regulations remain in Part 122 (substantive permit requirements) and Part 123 (State program requirements). Part 124 (common permitting procedures) remains applicable to all of the programs. On September 1, 1983 (48 FR 39611), EPA promulgated additional revisions covering a number of issues affecting the consolidated permit program.

After deconsolidation, the NPDES program continued to use Forms 1, 2B, and 2C. In 1984, EPA amended Form 2C to include toxic pollutant sampling and, in 1986, promulgated two new NPDES forms: Form 2D, for use by new manufacturing, commercial, mining and silvicultural operations; and Form 2E,

for use by facilities that do not discharge process wastewater (51 FR 26982, July 28, 1986). The Agency did not, however, revise either Standard Form A or Short Form A. Thus, these two forms do not request information to reflect all of the CWA's current requirements, including the emphasis on the control of toxic pollutants.

d. The Water Quality Act of 1987 and Water Quality-Based Permitting

On February 4, 1987, the CWA was amended again by the Water Quality Act (WQA) of 1987 (Pub. L. 100-4). The WQA included several provisions that affect POTWs and other TWTDS. Statutory amendments included requirements addressing sewage sludge, storm water, and water quality-impaired streams. In response to the 1987 amendments, EPA published technical revisions to amend the NPDES regulations on January 4, 1989 (54 FR 246). EPA promulgated final regulations for State sludge management programs on May 2, 1989 (54 FR 18716). As part of the WQA implementation effort, the Agency published rules implementing CWA sec. 304(l) and other changes to surface water toxics regulations on June 2, 1989 (54 FR 23868). This 1989 rulemaking recognized the Agency's commitment to protect water quality through water quality-based permitting.

The 1987 amendments provided that States were to adopt numeric water quality criteria for the "priority pollutants" listed pursuant to sec. 307(a)(1), if discharge of those pollutants could reasonably be expected to interfere with a designated use under State water quality standards. States were to adopt these criteria whenever they reviewed, revised, or added new water quality standards. Subsequent review of all States indicated that 43 States had adopted the criteria as required. Fourteen States, however, were not fully in compliance with the 1987 amendments as of December 22, 1992. On that date, EPA promulgated chemical-specific numeric criteria for those States, as necessary, to comply with the CWA (57 FR 60848).

On July 22, 1994, EPA published its whole effluent toxicity (WET) policy (59 FR 37494). The policy is intended (i) to promote uniform, nationwide compliance with statutory and regulatory requirements for the control of WET, and (ii) to assist permit writers in implementing these requirements. The policy reflects EPA's experience in implementing the 1989 water quality-based permitting regulations at 40 CFR 122.44(d). The WET policy provides for: evaluation of acute and chronic WET water quality criteria attainment at the

edge of the respective mixing zones; review of all major dischargers for reasonable potential to cause or contribute to exceedance of WET water quality criteria; consideration of available WET testing data and other information in evaluating whether a discharger has reasonable potential to cause or contribute to exceedance of WET criteria; imposition of effluent limitations to control WET upon finding reasonable potential to cause or contribute to exceedance of WET criteria; imposition of WET monitoring conditions where appropriate for dischargers that do not have effluent limitations to control WET; schedules for compliance with WET effluent limitations; application of water quality permitting regulations to apply without regard to the pollutant(s) that may be causing toxicity, including ammonia and chlorine; and application of the water quality-based permitting regulations to all dischargers, including POTWs.

2. Background of the Pretreatment Program

Congress recognized that regulating only those pollutant sources discharging effluent directly into the nation's waters would not achieve the CWA's goal to eliminate pollutant discharges. Consequently, the CWA required EPA to promulgate nationally applicable pretreatment standards that restrict the introduction of pollutants from industrial users of POTWs, also called indirect dischargers.

EPA first issued pretreatment standards on November 8, 1973 (38 FR 30982). Following the 1977 CWA amendments, EPA revised those regulations and issued the "General Pretreatment Regulations for Existing and New Sources of Pollution," on June 26, 1978 (43 FR 27736). The regulations were revised again on January 28, 1981 (46 FR 9439). As amended, the pretreatment regulations at 40 CFR Part 403 require that "any POTW (or combination of POTWs operated by the same authority) with design influent flow rates greater than five million gallons per day (mgd) and receiving from industrial users pollutants that pass through or interfere with the operation of the POTW" establish pretreatment programs as part of its NPDES permit. In addition, POTWs with design influent flow rates of less than five mgd may be required to develop pretreatment programs if non-domestic wastes cause upsets, sludge contamination, or violations of NPDES permit conditions or if their industrial users are subject to national pretreatment standards. EPA estimates

that 1,500 treatment facilities are required to administer such pretreatment programs.

The National Pretreatment Program's primary goal is protection of POTWs and the environment from the effects of discharges into municipal sewerage systems. This protection is achieved principally through regulating industrial users that discharge toxic pollutants or unusually large amounts of conventional pollutants into municipal systems. The General Pretreatment Regulations control pollutant discharges into POTWs in several ways. First, prohibited discharge standards apply to all industrial and commercial establishments connected to POTWs. 40 CFR 403.5. These standards include general prohibitions against the introduction of pollutants into POTW that may pass through the POTW or interfere with the operations of the POTW, as well as specific prohibitions relating to the introduction of pollutants which have the potential to create hazards for the POTW, such as heat, explosivity, and corrosivity. Second, categorical pretreatment standards apply to discharges by industrial users in specific industrial categories determined to be significant sources of toxic pollutants. Categorical standards are designed to ensure that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment.

Finally, 40 CFR 403.5(c) requires POTWs to develop and enforce local limits designed to ensure that industrial users meet both the general and specific prohibitions. Thus, local limits are intended to ensure that POTWs are able to comply with NPDES limits, including water-quality based standards. Local limits are Federally enforceable pretreatment standards, as defined by sec. 307(d). In cases where local limits are more stringent than categorical standards, the more stringent limit applies and is enforceable as a Federal standard.

On July 24, 1990, EPA promulgated amendments to the NPDES and General Pretreatment Regulations to reflect the findings of the "Report to Congress on the Discharge of Hazardous Wastes to Publicly Owned Treatment Works," also known as the Domestic Sewage Study (DSS) (55 FR 18716). The rule contained a number of regulatory changes intended to improve control of hazardous wastes discharged to POTWs, including revisions to the application requirements for POTWs at 40 CFR 122.21(j). Paragraphs 122.21(j) (1)-(3) contain whole effluent toxicity (WET) testing requirements, and paragraph 122.21(j)(4) requires POTWs with

approved pretreatment programs to submit a written technical evaluation of the need to revise local limits. Today, EPA proposes to revise the WET reporting requirements at § 122.21(j) and to revise the provision for the local limits technical evaluation by making this a POTW pretreatment program requirement rather than an application requirement based on concerns about the timing of such evaluations relative to imposition of water quality-based effluent limitations in POTW permits.

3. Program To Control Combined Sewer Overflows

Combined sewer systems (CSSs) are wastewater collection systems that transport both sanitary wastewater and storm water to POTWs. During dry weather, CSSs carry sanitary wastes, as well as industrial and commercial discharges, to POTW treatment plants. In periods of heavy wet weather flows, transported sewer waters can overflow the regulator structures, which normally convey waste streams to the treatment plant, and discharge into adjacent surface waters. These discharges are called "combined sewer overflows" (CSOs). CSOs often contain high levels of suspended solids, bacteria, pathogens, and, in many instances, heavy metals and other toxic pollutants, floatables, nutrients, oxygen-demanding materials, oil and grease, and other contaminants.

CSOs are point source discharges subject to technology-based treatment requirements and applicable water quality-based standards through NPDES permits. Because they occur prior to the headworks of the POTW treatment plant, these discharges are not considered discharges from a POTW and, consequently, are not subject to secondary treatment requirements.

In the United States, approximately 1,100 (mostly older) municipalities have CSSs, with approximately 11,000 CSO outfalls that periodically discharge untreated sewage, commercial and industrial wastes, and storm water during wet weather events. Almost 85 percent of these municipalities are located in the Northeast and Great Lakes areas. Studies conducted in recent years reveal that CSO discharges are a leading cause of reduced water quality, increased health risks, degraded ecological conditions, and impaired beneficial uses within the Nation's surface waters. Although pollutant concentrations in CSOs frequently are lower than those in untreated average-flow municipal wastewater (due to dilution occurring during high flows), CSOs often result in large pollutant loadings within a short time, potentially

causing beach closures, shellfish bed closures, and fish kills.

In 1989, EPA published the National Combined Sewer Overflow Control Strategy (54 FR 37370, Sept. 8, 1989). On April 19, 1994, EPA expanded on the 1989 strategy by publishing the CSO Control Policy (59 FR 18688). The Policy was developed through negotiated dialogue with State, environmental group, and municipal representatives. The Policy explains EPA's expectations for control of CSOs under the CWA and guides NPDES permitting authorities in issuing permits for CSO discharges. The Policy outlines a phased approach to permitting requirements. Under a Phase I permit, the permittee should document implementation of the nine minimum control measures identified in the Policy as minimum technology-based requirements established through best professional judgment (BPJ) to minimize CSO discharges. The nine minimum controls include review and modification of local pretreatment programs to minimize CSO impacts on receiving waters; maximization of flow to the POTW for treatment; control of solids and floatables; and monitoring to characterize effectively CSO impacts and the efficacy of CSO controls.

The nine minimum controls are measures that can generally be implemented expeditiously to reduce CSOs and their effects on receiving water quality. The Phase I permit should not only require implementation of the nine minimum controls, but should also require development of a long-term control plan. The long-term control plan describes the long-term control strategy developed to ultimately result in compliance with the requirements of the CWA (including attainment of water quality standards). Under a Phase II permit, the permittee implements the specific controls described in the long-term control plan.

C. Sewage Sludge Program

1. Statutory Requirements for Sewage Sludge

In 1987, Congress amended sec. 405 to establish a comprehensive sewage sludge control program. This program regulates the use and disposal of sewage sludge by POTWs and by other treatment works treating domestic sewage (TWTDS). Section 405 required EPA to develop technical standards that would establish sewage sludge management practices and acceptable levels of toxic pollutants in sludge.

Section 405 also provides that NPDES permits issued to TWTDS contain requirements implementing the sewage

sludge standards, unless sewage sludge control requirements are included in a permit issued under one of the following: Subtitle C of the Solid Waste Disposal Act; Part C of the Safe Drinking Water Act; the Marine Protection, Research, and Sanctuaries Act; the Clean Air Act; or EPA-approved State programs that comply with sec. 405. EPA may also issue "sludge-only" permits to TWTDS that are not otherwise subject to the NPDES program or to the other permitting programs listed above.

2. Sewage Sludge Permit Program Regulations

On May 2, 1989, EPA promulgated regulations establishing the legal and programmatic framework for the National Sewage Sludge Program (54 FR 18716). Sewage sludge management provisions are to be incorporated into EPA-issued permits or permits issued by a State under an EPA-approved sewage sludge program. Sewage sludge information reporting requirements were also added to the overall NPDES permit application requirements of 40 CFR 122.21. The new regulations, however, neither listed the specific sewage sludge information requirements nor provided a form for reporting this information. Instead, the rulemaking cross-referenced the existing State Sludge Management Program regulations in Part 501 and required applicants to submit the information listed at § 501.15(a)(2). Paragraphs (i)–(v) of § 501.15(a)(2) require information on the location and permitting status of the TWTDS. Paragraphs (vi)–(xii) require technical information on the applicant's sewage sludge use or disposal practice(s).

On February 19, 1993, EPA amended the sewage sludge permit program regulations (58 FR 9404). This amendment phased in requirements for submitting sewage sludge permit application information. Any TWTDS that is required to have, or that requests, site-specific pollutant limits was required to submit permit application information by August 18, 1993, for the first round of Part 503 standards. Other TWTDS with NPDES permits must submit application information with their next NPDES permit applications. Finally, TWTDS without NPDES permits ("sludge-only facilities") were to submit identification and screening information to the permitting authority by February 19, 1994, for the first round of Part 503 standards.

3. Part 503 Technical Standards

On November 25, 1992, EPA promulgated the sewage sludge use and

disposal standards required by section 405 of the CWA (58 FR 9248, *et seq.*, February 19, 1993). These standards regulate the use and disposal of sewage sludge when it is applied to land, placed on a surface disposal site (including sludge-only landfills), fired in a sewage sludge incinerator, or sent to a municipal solid waste landfill (MSWLF). The standards for each regulated sewage sludge use or disposal method consist of general requirements, pollutant limits, management practices, operational standards, and requirements for monitoring, recordkeeping, and reporting. A number of parties petitioned for review of the regulations and on November 15, 1994, the United States Court of Appeals for the District of Columbia Circuit remanded several aspects of the regulations for modification or additional justification. *Leather Industries of America, Inc. v. Environmental Protection Agency*, 40 F.3d 392 (D.C. Cir. 1994).

4. Implementation of Part 503 Technical Standards

Section 405(f) of the CWA requires that permits issued to facilities involved in sewage sludge generation, treatment, or disposal include Part 503 requirements. Both POTWs and other TWTDS are engaged in sewage sludge generation, treatment, or disposal. However, some of these facilities are not required to obtain NPDES discharge permits pursuant to sec. 402 of the CWA because they do not discharge pollutants to surface waters. These are "sludge-only" facilities.

POTW permits must contain requirements implementing applicable Part 503 technical standards and other Part 122 permit conditions (such as boilerplate conditions and compliance monitoring requirements). POTW permits may also contain any other conditions the permitting authority develops on a case-by-case basis to protect public health and the environment. The permit also establishes a POTW's responsibilities for sewage sludge it sends to other facilities for disposal.

In addition to POTWs, other TWTDS may also be issued permits. These treatment works include facilities dedicated to sewage sludge disposal (i.e., surface disposal sites and sewage sludge incinerators), as well as certain facilities that provide treatment or otherwise change the quality of the sewage sludge before ultimate use or disposal. Sewage sludge has undergone a change in quality if its pollutant concentrations, pathogen levels, or vector attraction properties have been altered sufficiently to change the

sludge's regulatory status under Part 503. Therefore, processes such as stabilization, composting, digestion, heat treatment, or blending with bulking agents or with sewage sludge from another treatment works may all qualify as sewage sludge treatment. (For a more detailed discussion of who must apply for a permit, see the preamble to the May 2, 1989, regulations at 54 FR 18725.)

5. Interim Sewage Sludge Permit Application Form

On November 8, 1993, EPA published a notice about the interim sewage sludge permit application form (58 FR 59260). This interim form was developed to simplify the application process until Form 2S was completed. Section 122.21(d)(3)(ii) requires sewage sludge permit applications to include the information at § 501.15(a)(2), which includes both specific and general information. This interim form ensures that permittees submit the necessary information; helps permittees to understand exactly which requirements apply to them; and makes the application requirements consistent for all permittees.

Proposed Form 2S is based on the interim application form. EPA welcomes comments on the proposed Form 2S, especially from users of the interim form.

D. NPDES Watershed Strategy

The Watershed Protection Approach is an Agency initiative which promotes integrated solutions to address surface water, ground water, and habitat concerns on a watershed basis. It represents EPA's renewed emphasis on addressing all stressors within a hydrologically defined drainage basin, instead of viewing individual pollutant sources in isolation. It is not a new program competing with, or replacing, existing programs; rather, it provides a management framework, within which baseline CWA program requirements, related public health concerns, and newer initiatives can be integrated to address restoration and protection of aquatic ecosystems cost-effectively.

The Watershed Protection Approach has four components. First, it focuses protection and restoration activities within a geographically defined resource, the watershed. Second, it emphasizes the involvement of all affected stakeholders within a watershed; these may include Federal authorities, State governments, local governments, the regulated community, environmental groups, and other interested parties. Third, it stresses the need for appropriate stakeholders to

take comprehensive, integrated actions to address environmental priorities. Finally, it promotes a regular effort to evaluate the success of these actions in protecting and restoring the watershed.

The broad range of NPDES functions and activities gives the NPDES program a key role in implementing the Watershed Protection Approach. On March 21, 1994, the EPA Assistant Administrator for Water issued the NPDES Watershed Strategy. The Strategy represents a first step toward OW's goal of fully integrating the NPDES program into the broader Watershed Protection Approach.

The Strategy outlines national objectives and implementation activities: (1) to integrate NPDES program functions into the broader Watershed Protection Approach; and (2) to support the development of Statewide basin management approaches. To this end, the Strategy identifies six areas that are considered essential for the Agency to support these objectives:

Statewide Coordination—Support the development of Statewide basin management frameworks, coordinate EPA Office of Water grants application and reporting processes, and coordinate interstate basin efforts to facilitate implementation of the Watershed Protection Approach;

NPDES Permits—Implement a methodology for issuing NPDES permits on a watershed basis and emphasize training on watershed protection. Streamline the NPDES permit development, issuance, and review process. Develop and implement innovative approaches to NPDES permitting on a watershed basis, where feasible;

Monitoring and Assessment—Develop a Statewide monitoring strategy; establish point source ambient monitoring requirements, where appropriate, to facilitate the development of monitoring consortia and individual monitoring efforts; and promote comparable data collection, analysis, and utilization by all stakeholders;

Programmatic Measures and Environmental Indicators—Revise existing national accountability measures to facilitate implementation of the Watershed Protection Approach and establish new measures of success that reflect assessment of progress toward short- and long-term watershed protection goals;

Public Participation—Utilize existing NPDES public participation process and development of basin-wide management plans to encourage informed participation by watershed stakeholders,

educate stakeholders about watershed planning efforts, and seek broad public participation in identifying local environmental goals; and

Enforcement—Include emphasis on minor facilities which are discharging to priority basins, within the base national enforcement program, and use 308 authorities, inspections and supplemental environmental projects, where appropriate, to support watershed protection activities.

The Agency views today's rulemaking as an opportunity to further the objectives of the Watershed Protection Approach and the NPDES Watershed Strategy. Both proposed Form 2A and proposed Form 2S request information which support these objectives. These questions are discussed in detail below. The Agency requests comment on what specific additional changes might be made to proposed Form 2A and proposed Form 2S to support the Watershed Protection Approach.

E. Permit Writer's Information Needs Related to Endangered Species and Historic Properties

EPA is considering whether the permit application regulations should require permit applicants to provide available information related to endangered species and historic properties. The Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, creates certain obligations requiring the Agency to consult with other federal agencies (U.S. Fish and Wildlife Service and National Marine Fisheries Services) when EPA carries out, authorizes, or funds an action that may affect threatened or endangered ("listed") species. The National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*, creates certain obligations requiring the Agency to consult with State officials (State Historic Preservation Officers) and/or federal officials at the Advisory Council for Historic Preservation in order for EPA to take into account the effect on historic properties of an "undertaking," as that term is defined by the National Historic Preservation Act. EPA believes that the collection of such information would be useful to regulatory officials in considering permit applications for activities or undertakings that may affect listed species or historic properties, respectively. Absent information in the permit application, EPA may need to collect such information on a case-by-case basis, which could delay the permit issuance process in some instances.

EPA invites public comment on the information that could or should be provided by the permit applicant. Specifically, if EPA established permit

application questions about listed species or historic properties, what kind of information can or should the permit applicant provide? Would it be appropriate to request that the permit applicant identify whether there are known or suspected listed species, including species proposed for listing and designated critical habitat, or historic properties in the area of the POTW discharge (or sludge use or disposal site by a TWTDS) that would be affected by that POTW discharge (or sludge use or disposal by a TWTDS)? How could or should EPA provide applicants with flexibility to assist regulatory officials in the consideration of potential impacts of activities on listed species or historic properties? Though EPA does not propose what type of information related to endangered species or historic properties would be sought in today's proposal, any such information collection requests in the final regulation may affect the costs associated with complying with the permit application regulations, both in terms of financial cost and burden hours. EPA invites public comment on all aspects of efficient federal permitting of POTWs (and TWTDS) consistent with requirements of the Endangered Species Act and the National Historic Preservation Act.

F. Permit as a Shield

Section 402(k) of the CWA, also known as the "shield" provision, provides that compliance with an NPDES permit shall be deemed compliance, for purposes of sec. 309 and 505 enforcement, with sec. 301, 302, 306, 307, and 403 of the CWA (except for any standard imposed under sec. 307 for toxic pollutants injurious to human health). In response to questions raised regarding EPA's interpretation of the scope of the "shield" associated with NPDES permits under the CWA, the Agency issued a policy statement on July 1, 1994, to describe the Agency's current position on the scope of the authorization by EPA to discharge under an NPDES permit and the shield thus associated with permit authorization.

As part of an application for an individual NPDES permit, EPA requires that an applicant provide certain information on its facility. In the case of industrial permit application, this includes specific information about the presence and quantity of a number of specific pollutants in the facility's effluent, as well as general information on all waste streams and operations contributing to the facility's effluent and the treatment the wastewater receives. Present application requirements for

municipal discharges focus primarily on the operation and treatment processes at the municipal treatment works, although some quantitative information is also required.

Historically, EPA has viewed the permit, together with material submitted during the application process and information in the public record accompanying the permit, as important bases for an authorization to discharge under sec. 402 of the CWA. The availability of the sec. 402(k) shield is predicated upon the issuance of an NPDES permit and a permittee's full compliance with all applicable application requirements, any additional information requests made by the permit authority and any applicable notification requirements under 40 CFR §§ 122.41(l) and 122.42, as well as any additional requirements specified in the permit.

In the July 1, 1994, policy statement, the Agency explained that a permit provides authorization and therefore a shield for the following pollutants resulting from facility processes, waste streams and operations that have been clearly identified in writing in the permit application process when discharged from specified outfalls:

(1) Pollutants specifically limited in the permit or pollutants which the permit, fact sheet, or administrative record explicitly identify as controlled through indicator parameters (of course, authorization is only provided to discharge such pollutants within the limits and subject to the conditions set forth in the permit);

(2) Pollutants for which the permit authority has not established limits or other permit conditions, but which are specifically identified in writing as present in facility discharges during the permit application process; and

(3) Pollutants not identified as present but which are constituents of wastestreams, operations or processes that were clearly identified during the permit application process (the permit, of course, may explicitly prohibit or limit the scope of such discharges).

With respect to subparts 2 and 3 of the permit authorization described above, the Agency recognizes that a discharger may make changes to its permitted facility (which contribute pollutants to the effluent at a permitted outfall) during the effective period of the NPDES permit. Pollutants associated with these changes (provided they are within the scope of the operations identified in the permit application) are also authorized provided the discharger has complied in a timely manner with all applicable notification requirements (see 40 CFR 122.41(l) and 122.42 (a) and

(b) and the permit does not otherwise limit or prohibit such discharges. Section 122.42(b) requires that POTWs must provide adequate notice, including information on the quality and quantity of discharges to the POTW and anticipated impacts on the quantity or quality of effluent discharged by the POTW, of new introductions of pollutants by indirect dischargers into the POTW and any substantial change in the volume or character of pollutants being introduced by sources introducing pollutants into the POTW at the time of permit issuance.

Notwithstanding any pollutants that may be authorized pursuant to subparts 1 and 2 above, an NPDES permit does not authorize the discharge of any pollutants associated with wastestreams, operations, or processes which existed at the time of the permit application and which were not clearly identified during the application process.

In the July 1994 policy statement, the Agency committed to revise the NPDES permit application regulations for both municipal and industrial discharges, so as to ensure that applicants would have the responsibility to characterize more fully the nature of their effluents and the contributions of their effluents to receiving waters. The Agency stated that, in addressing this issue, it would review EPA's position on the scope of the shield provided by sec. 402(k).

Generally, the discharger is in the best position to know the nature of its discharge and potential sources of pollutants. Consequently, requiring as full a disclosure as technically possible in the permit application is one option EPA may want to consider in light of the protection afforded the discharger by the permit shield. However, in the case of POTWs, providing a permit shield only for pollutant discharges fully and completely characterized in the permit application could represent a significant burden on POTWs if they were required to identify every pollutant discharged. This is so because of the potential pollutant contribution into POTW sewer systems from industrial users and residential dischargers. Narrowing the scope of the shield and consequent expansion of potential liability would likely raise the cost associated with the failure to anticipate, detect, and provide information on these discharges.

The Agency has concerns that, using the current application form, permitting authorities using the existing municipal application forms may not always receive the information about an applicant's discharge needed to develop permits consistent with the requirements of the CWA. In today's

proposed rule, the Agency is updating its POTW discharge application requirements (proposed Form 2A and proposed § 122.21(j)) to provide more information to permit writers and to streamline the permitting process by ensuring that the information needed from most applicants is consolidated onto a single application form. The Agency solicits comment on whether the proposal adequately addresses these concerns. Moreover, EPA is seeking the public's views on how to strike the proper balance between the need for environmental protection, incentives to ensure adequate disclosure, and the discharger's need for certainty that its conduct meets legal requirements.

The Agency also specifically requests comment on adding additional application requirements that would make applicants responsible for providing more information than that specified on the form. For example, the Agency is considering adding a question asking whether the POTW has any other information on pollutants not otherwise requested on the form. The Agency is also considering whether to ask whether the POTW has any information on adverse impacts on water quality, such as information concerning beach closings, citizen complaints, or fish kills. In providing comments on such questions, commenters should state whether they would have a chilling effect on—that is, might tend to inhibit—the activities of POTWs already participating, for example, in ambient monitoring. Comment is also requested on the extent to which such information is already available to permitting authorities.

G. Pollutant Data from POTWs

In preparing options for pollutant data collection for today's proposed rule, the Agency sought to identify relevant pollutant data records for reference. In so doing, the Agency reviewed POTW effluent "priority pollutant scan" data from EPA Region VI and from North Carolina. These data represented data from samples of the effluents of several hundred POTWs with a design flow greater or equal to one (1.0) mgd (i.e., "major" POTWs). Although the information requested by the Region and State differed in some respects, each required major POTWs to report on all "priority pollutants" (i.e., the pollutants listed in 40 CFR Part 122, Appendix D, Tables II and III). The Agency compiled this information in a database, and analyzed it to determine the pollutants most frequently detected in these effluents.

The Agency concluded that, although this survey was not conducted based on

statistical methodologies, it was possible to discern certain general patterns in the incidence of pollutants reported. Our review of Region VI and North Carolina data indicated that over 90% of 300 POTWs sampled reported at least one of the chemicals listed in Appendix D, Table III. Copper and zinc each appeared in two-thirds of all the POTWs surveyed; lead and nickel each appeared in about thirty percent of the effluents sampled; antimony, arsenic, cadmium, and silver each appeared in more than fifteen percent of facilities; and mercury and cyanide each appeared in slightly fewer than fifteen percent. Certain volatile organics (i.e., THMs) each appeared in roughly a quarter or more of the POTWs sampled; and certain base neutral compounds (i.e., phthalate esters) each showed up in ten to twenty percent of POTWs. Finally, only a few of the pesticides listed in Appendix D, Table II were reported in a small number of these scans.

While this information was not determinative in the Agency's decisions about what to include on the forms, it was consistent with other information provided, and supported some of the Agency's assumptions articulated elsewhere in this preamble concerning the appropriate pollutant test data to require from major POTWs. Notably lacking, however, were data on discharges from "minor" POTWs (those with a design flow of less than one (1.0 mgd). The Agency is seeking information concerning the discharges from minor POTWs and intends to collect such information between this proposal and the final rule that will provide a basis for determining the appropriate sampling requirements for those POTWs.

H. Public Consultation in the Development of Today's Proposal

In the course of developing today's proposed rule, EPA made efforts to consult with interested stakeholders in the application process. In late 1993 and early 1994, the Agency sought feedback on draft forms and other elements of the proposal from States with approved NPDES programs, local governments, the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), the Association of Metropolitan Sewerage Agencies (AMSA), the California Association of Sanitation Agencies (CASA), the Water Environment Federation (WEF), and several environmental groups. In response to this outreach effort, the Agency received written comments from a dozen States, several municipalities, and from AMSA. Agency representatives also met with State and

municipal representatives and conducted a conference call through WEF.

With respect to the POTW wastewater discharge application, the Agency was particularly interested in issues relating to pollutant data collection. The Agency indicated that it was considering a tiered approach, based upon POTW size and the level of industrial contribution (i.e., whether the POTW was required to implement a local pretreatment program). Most commenters generally supported the idea of a tiered approach (i.e., that the Agency not require the same information from all POTWs). The Agency received an array of suggestions concerning what pollutant data should be required. Among the concerns raised by commenters were the following: ease of completion; flexible implementation by States; reduced pollutant data requirements; sensitivity to impacts on small municipalities; and elimination of redundant reporting. In addition, the Agency received numerous technical comments concerning various details of the information to be reported.

In response, the Agency has made changes to the proposed rule to provide a user-friendly modular design for the forms and has revised its initial approach to municipal pollutant data collection for this proposal. The Agency's proposed approach to pollutant data collection would limit pollutant data requests to those pollutants of greatest concern and would require less pollutant data from smaller municipalities. However, the Agency is still considering several options concerning the amount of pollutant data to be provided, including options that would require minor POTWs to provide sampling data on metals, some organic compounds, and whole effluent toxicity.

With respect to the sludge application, the Agency was interested in the type and amount of pollutant data currently requested by States. Responses showed variation among States. Comments were also received that questioned the need for some of the information to be collected by Form 2S. The Agency has removed some questions that it agrees are not necessary for sludge permit applications. The Agency also requests comment on several options for pollutant data collection.

Finally, the Agency proposes to allow the use of existing data and to reduce redundant reporting by allowing permitting authorities to waive reporting of information to which they have direct access. This proposal is discussed in more detail in those portions of the preamble which focus on

the relevant provisions of the proposed rule. The Agency also solicits comments on alternative considerations specifically addressed to pollutant data submission and industrial user information.

II. Approach Taken in Today's Notice

A. Scope of Today's Rulemaking

Today's notice proposes two sets of NPDES application requirements and a corresponding permit application form, together with instructions, for each. Proposed § 122.21(j) contains application requirements pertaining to wastewater treatment and discharge at publicly owned treatment works (POTWs), and would require that applicants submitting this information to EPA use new Form 2A. Proposed § 122.21(q) contains application requirements pertaining to generation, treatment, and disposal of sewage sludge at POTWs and other treatment works treating domestic sewage, and would require that applicants submitting applications to EPA use new Form 2S.

The proposed forms would be used both by EPA and by approved NPDES States that choose to adopt these forms. Approved States could also elect to use forms of their own design so long as the information requested includes at least the information required by the final NPDES/sludge regulations. EPA and State NPDES authorities may request additional information from permit applicants whenever necessary to establish appropriate permit limits and conditions. CWA sec. 308.

The proposed forms and instructions for each form are included with today's proposed rule as an appendix to the rulemaking package. EPA is not intending to publish the forms and instructions with the final rule, so as to reduce the length of the Federal Register notice for the final rulemaking, and solicits comment on this issue.

B. The Agency Proposes to Revise the Definition of POTW and Existing Permit Application Requirements for POTWs

Today, EPA proposes to revise the definition of the term "POTW," as defined in 40 CFR Part 122 to conform more exactly with the definition of the term at 40 CFR Part 403. "POTW" is defined at 40 CFR 403.3 as "a treatment works . . . which is owned by a State or municipality." This definition includes devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature, as well as sewers, pipes, and other conveyances that carry wastewater to a

POTW treatment plant. As defined, the term "POTW" also refers to the municipality that has jurisdiction over the discharges to and from such a treatment plant. In today's proposed rule, the Agency proposes to revise the definition of POTW in Part 122 so as to be consistent with the more commonly understood definition located in Part 403.

The Agency's intention is to simplify and clarify, though EPA recognizes that any change may create unanticipated confusion. The Agency solicits comments on effects on conforming the Part 122 definition with the Part 403 definition. Specifically, the Agency is interested in the extent the change would affect: implementation of the Combined Sewer Overflow policy; regulatory consideration of sanitary sewer overflows; and implementation and applicability of the NPDES and pretreatment programs to sewerage collection systems that are not owned/operated by the owner/operator of the treatment plant to which collected waste waters are transported.

The Agency proposes to revise whole effluent toxicity testing requirements found in the existing POTW permit application regulations at § 122.21(j). Under existing § 122.21(j) (1)-(3), a POTW must provide the results of whole effluent biological toxicity testing as part of its NPDES permit application, if the POTW has a design flow equal to or greater than one million gallons per day; if it has (or is required to have) an approved pretreatment program; or if it is required to report by the Director (NPDES State Program Director or EPA Regional Administrator). The Agency proposes to revise this requirement to reflect Agency guidance and policy, as well as practical experience in implementing existing requirements, as set forth at proposed § 122.21(j)(4).

The Agency proposes to change the pretreatment requirement for local limit calculations from an application requirement to a permit requirement. Under existing § 122.21(j)(4), any POTW with an approved pretreatment program must provide a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1). The existing provision requires that the local limits evaluation be done prior to permit issuance. This has generated feedback from States and municipalities that it would be better to require the evaluation after permit issuance, so as to avoid the need for a second technical evaluation if the POTW's permit limits are revised in the new permit. In response to these concerns, the Agency proposes to change this from an application requirement to a POTW

pretreatment program requirement, at proposed § 403.8(f)(4)(B).

C. EPA Proposes Form 2A for POTWs to Replace Standard Form A and Short Form A

Today EPA proposes a new NPDES application form, Form 2A, for POTWs. Currently, POTWs may be required to submit one of two forms, depending on the size of the POTW. While both of these forms are approved Federal forms, the NPDES regulations do not require use of the forms by POTWs when applying for a permit. Standard Form A is intended to be used by all POTWs with a design flow equal to or exceeding one million gallons per day. Standard Form A contains questions about the facility and collection system, discharges to and from the facility (including information on some specific pollutant parameters), and scheduled improvements and schedules of implementation. Short Form A is intended for use by all POTWs with a design flow of less than one million gallons per day. Short Form A contains only fifteen questions of a summary nature, and asks for virtually no information on specific pollutants. Many States use one or both of the Federal forms, but a number of States have developed State forms that request information not included on the Federal forms.

EPA proposes to replace both Standard Form A and Short Form A with a single Form 2A, subdivided into two parts, titled "Basic Application Information" and "Supplemental Application Information". Basic application information would include information about the collection system and the treatment plant, general information concerning the types of discharges from the treatment plant, identification of outfalls, certain effluent characteristics, and scheduled improvements. The Agency believes that a separate short form for all minor POTWs is no longer appropriate, because in order to establish adequate permit limits, information such as that mentioned above must be collected from all POTWs, regardless of size.

On the other hand, the Agency recognizes the need to be selective in requiring further additional information. For this reason, the Agency has divided the proposed form into two parts. To limit the reporting burden for smaller POTWs without significant industrial contributions, EPA proposes to require effluent monitoring data for 17 parameters from POTWs with design flows less than one million gallons per day (mgd) and without pretreatment programs. These 17 parameters consist

mostly of conventional and nonconventional pollutants. Larger POTWs and pretreatment POTWs, by comparison, would be required to report effluent monitoring data for metals and organic compounds as well as the 17 parameters required for smaller POTWs. Thus, the Basic Application Information part of Form 2A would require reporting on those parameters required of all POTWs, while the Supplemental Application Information part of the form would be used by applicants providing data on toxic pollutants (i.e., larger POTWs and pretreatment POTWs). Similarly, the Supplemental Application Information part of Form 2A is intended to be used by applicants required to provide the results of whole effluent toxicity tests, applicants with significant industrial users, and applicants with CSOs.

The Agency also invites comment on requiring use of the form itself. As explained previously, EPA conducted significant public outreach to design an application form that is easy to use, including outreach on the form itself. Use of the form would provide all of the information requested in the proposed application regulations, whereas modification of the form may result in failure to provide information to be required in the proposed regulations. On the other hand, EPA seeks to provide maximum flexibility by "streamlining" procedures for permit development. The Agency seeks comment on whether requiring use of the form would interfere with streamlining permitting procedures.

D. Applicability of Form 2A to Privately Owned and Federally Owned Treatment Works

As in the case of existing Standard Form A and Short Form A, EPA proposes that Form 2A and the application requirements at § 122.21(j) be required only for POTWs. However, the Agency proposes that the Director have the discretion to use the proposed form for treatment works that are not POTWs. As previously discussed, the NPDES program has evolved considerably since Standard Form A and Short Form A were promulgated in 1973, and now embraces facilities that operate similarly to POTWs but which do not meet the regulatory definition of POTW. Although not owned by a State or municipality, such facilities nevertheless receive predominantly domestic wastewater, provide physical and/or biological treatment, and discharge effluent to waters of the United States. Such facilities include Federally owned treatment works (FOTWs) and privately owned treatment

works that treat primarily domestic wastewater.

EPA is aware that Federal and State permitting authorities use a number of mechanisms for obtaining NPDES permit application information from non-POTW treatment works. These mechanisms include Standard Form A, Short Form A, Form 2C ("Existing Manufacturing, Commercial, Mining, and Silvicultural Operations"), and Form 2E ("Facilities Which Do Not Discharge Process Wastewater"). The Agency believes that Form 2A would in many cases be the more appropriate application form for non-POTW treatment works, and solicits comments on its applicability to such facilities.

Nevertheless, the Agency does not propose to require Form 2A for non-POTW treatment works. Despite many functional similarities to POTWs, such facilities do not share the same regulatory requirements and thus might not be required to report the same information to permitting authorities. In many instances, non-POTW treatment works are not required under the NPDES regulations to develop pretreatment programs, meet secondary treatment requirements, or report results of whole effluent toxicity testing with their permit applications. For those facilities, requiring such information through Form 2A might be unnecessary.

The Agency solicits comments on whether the provisions of § 122.21(j) and the requirement to use Form 2A should be extended to treatment works other than POTWs. EPA is particularly interested in commenters' views on how to collect appropriate information in appropriate circumstances. EPA also seeks to design permit application requirements to account for privatization of treatment plants initially constructed as publicly owned treatment works. The permit application requirements in this proposed rule may be appropriate for partially privatized portions of POTWs, particularly because the proposed information regulations in today's rule would solicit information about sewerage collection systems that might not otherwise be collected under the industrial permit application regulations. Finally, EPA solicits comment on the extent of the similarity between POTWs and FOTWs, for example, whether FOTWs would have combined sewage collection systems. In another part of today's proposal, EPA is soliciting comment about the definition of POTW to which the permit application regulations would apply.

E. EPA Proposes Revised Application Requirements and Form 2S for Sewage Sludge Permits

Today, EPA also proposes a new form, Form 2S, to collect information on sewage sludge from treatment works treating domestic sewage (TWTDS). The term "treatment works treating domestic sewage" is a broad one, intended to reach facilities that generate sewage sludge or effectively change its pollutant characteristics as well as facilities that control its disposal. The term includes all POTWs and other facilities that treat domestic wastewater. It also includes facilities that do not treat domestic wastewater but that treat or dispose of sewage sludge, such as sewage sludge incinerators, composting facilities, commercial sewage sludge handlers that process sludge for distribution, and sites used for sewage sludge disposal. In addition, EPA may designate a facility a TWTDS when the facility's sludge quality or sludge handling, use, or disposal practices have the potential to adversely effect public health and the environment. Septic tanks or similar devices are not considered TWTDS.

In addition to proposing sewage sludge application requirements in new paragraph 122.21(q), EPA also proposes to delete the cross-reference to § 501.15(a)(2) in paragraph 122.21(d)(3)(ii). This would consolidate all of the sewage sludge application requirements in paragraph 122.21(q). The information included in § 122.21(d)(3)(ii) and § 501.15(a)(2) was not intended to be a final, comprehensive list of all of the application information required of a TWTDS. Such a comprehensive list was not possible until after promulgation of the technical sewage sludge standards. Rather, with these sections, EPA provided a minimum set of information requirements to suffice until more comprehensive sewage sludge permit application regulations could be promulgated. In light of the promulgation of technical sewage sludge use or disposal standards, at 40 CFR Part 503, EPA today proposes to modify the sewage sludge permit application requirements to add new § 122.21(q) and to revise paragraph § 122.21(d)(3)(ii) accordingly.

EPA intends to maintain consistency between the NPDES permit application requirements of Part 122 and the State sewage sludge permitting requirements of Parts 123 and 501. This reflects EPA's belief that a TWTDS should submit the same application information regardless of whether the permitting authority regulates sludge management under an approved NPDES or under a non-NPDES

program. Therefore, under today's rulemaking, EPA also proposes to revise the language of §§ 123.25(a)(4) and 501.15(a)(2) to modify the sludge information requirements. EPA seeks comment on this revision.

F. Reasons for Separate Form 2A and Form 2S

EPA today proposes two separate forms for municipal wastewater discharges and sludge for several reasons. First, the forms would differ in their applicability. Form 2A would apply only to POTWs; Form 2S would require information from all TWTDS. Most facilities that generate, treat, or dispose of sewage sludge are POTWs, and will be required to submit both application forms. However, several thousand TWTDS do not discharge to surface waters and therefore are not required to have NPDES discharge permits. Thus, they would be required to submit Form 2S but not Form 2A.

Second, separate application forms are also appropriate because wastewater and sewage sludge are often regulated by different permitting authorities. In 41 States and territories, the NPDES program is administered at the State level through an EPA-approved NPDES program. Therefore, POTWs in NPDES States would obtain NPDES permits from the State permitting authority (by submitting Form 2A to the State) and sewage sludge permits from EPA (by submitting Form 2S to the EPA Regional Office). Separate application forms would facilitate this bifurcated permitting process. In addition, even when a State sludge permitting program is approved, the program will not necessarily be administered by the State's NPDES permitting authority. For example, a POTW in a State with both NPDES and sludge permitting authority could receive its NPDES permit from the water management agency and its sewage sludge permit from a solid waste agency. Separate Forms 2A and 2S would also facilitate permitting in this situation.

G. EPA Solicits Comment on the Use of Electronic Application Forms

Consistent with recent amendments to the Paperwork Reduction Act, the Agency intends to develop electronic data submission as an alternative form of application. The use of electronic media should help to streamline the application process and to reduce the amount of repetition associated with completing application forms that are only available on hard copy. As previously noted, the elimination of redundant reporting is one of the goals of this rulemaking.

It is not clear, however, how this would best be accomplished, especially because permit application forms must be "signed" to ensure reliability of permit application information (and enforceability of the permit application regulations). Options range from transmitting data electronically, submitting disk copies, or submitting a hard copy. It might be most feasible to have electronic forms that could be distributed and completed electronically, and then printed, signed, and submitted. Although the Agency is considering how "signatures" for electronic submissions could be obtained, there are other issues concerning the use of application forms, such as how to attach accompanying documents. The Agency solicits comments regarding the interest that applicants and permitting authorities may have in this area, and suggestions as to how it could most feasibly be accomplished.

III. Description of Proposed Requirements

A. EPA Proposes to Revise Requirements in § 122.21 (c), (d) and (f) Concerning the Use of Forms 1, 2A, and 2S

EPA proposes revisions to the existing general application requirements for all NPDES permittees, which would require the use of Forms 2A and 2S by applicants for EPA-issued permits. The proposed rule would not require applicants using these forms to use Form 1, as is currently required. Today's proposed rule substantially incorporates the requirements of § 122.21(f) into the requirements of proposed § 122.21 paragraphs (j) and (q).

1. Requirement to Submit Form 2A

EPA proposes in § 122.21(d) to require POTWs to submit the information at § 122.21(j) using Form 2A or an equivalent form approved by the Director. The Agency proposes to require applicants for EPA-issued permits to complete Form 2A, but is considering not requiring the use of the form so long as the proposed regulatory requirements are met. The Agency intends to allow the use of any method of electronic data submission the Agency may approve as part of the final rule in lieu of the form itself.

2. Requirement to Submit Form 2S

EPA also proposes in § 122.21 paragraphs (c)(2)(iii) and (d) to require TWTDS to submit the information at § 122.21(q) using Form 2S or an equivalent form approved by the Director. As with Form 2A, the Agency proposes to require applicants for EPA-

issued permits to complete Form 2S, but is considering not requiring the use of the form so long as the proposed regulatory requirements are met. Also as with Form 2A, the Agency intends to allow the use of any method of electronic data submission the Agency may approve as part of the final rule.

B. Application Requirements for POTWs (40 CFR 122.21(j))

Today's proposed rule includes application requirements for all POTWs. These requirements are proposed at 40 CFR 122.21(j). Form 2A tracks the information required by the regulation in parallel fashion. Applicants for State-issued permits are not required to use Form 2A, so long as the other application form provided by the Director requests the information required by proposed § 122.21(j).

EPA acknowledges concerns relating to redundant reporting which were raised by State and municipal commenters during the consultation process. The Agency does not wish to require applicants to report information already provided or available to the permitting authority. Today's proposal would allow permitting authorities to waive reporting requirements, as appropriate. The introductory paragraph of proposed § 122.21(j) would allow the Director to waive any requirement in proposed paragraph (j) if the Director has access to substantially identical information. The Agency solicits comment on this approach and, specifically, on the conditions for allowing such a waiver. In today's proposed rule, the Agency also solicits comments on more narrowly defined waivers for specific requirements (see discussion below concerning pollutant data requirements and industrial user information requirements).

The Agency also solicits comment on ways to allow the permit writer or permitting authority discretion in waiving particular information where the permitting authority determines that such information is not necessary for the application. In other words, there may be flexible ways to look at each applicant in light of the overall "matrix of characteristics" regarding a particular facility. Where, for example, historical data indicate that additional sampling is not warranted unless other conditions have changed, the Agency is allowing the permitting authority to waive such sampling. Such flexibility would involve a holistic approach to implementing these proposed requirements. The Agency solicits comment as to ways in which it could be accomplished without making these provisions entirely discretionary, and

thus making it difficult for the applicant to predict how discretion would be exercised. This might be particularly relevant on the second and subsequent rounds of permitting under these proposed provisions. The Agency also seeks comment on what information might be appropriate and what information might be inappropriate for such waivers.

1. Basic Application Information

Today's proposal would require all POTW applicants to provide the information in proposed § 122.21(j)(1). All of this information is also requested in Questions 1–16 of the Basic Application Information part of proposed Form 2A.

Proposed § 122.21(j)(1) of today's rule would require information on the POTW's service area and physical plant. The proposed rule would require all applicants to provide information regarding the community served and physical characteristics of the treatment works.

Proposed § 122.21(j)(1)(i) requests facility identification information. Proposed § 122.21(j)(1)(ii) requests information about the applicant, which may or may not be the facility itself. Proposed § 122.21(j)(1)(iii) asks the applicant to provide permit numbers of any existing environmental permits that have been issued to the facility.

Proposed § 122.21(j)(1)(iv) would require the applicant to list the municipalities and populations served by the POTW. The POTW may serve several areas (including unincorporated connector districts) in addition to the one in which it is located. The permit writer needs to know what areas are served and the actual population served in order to calculate the potential domestic sewage loading to the facility. The information on the community is also useful for providing notice and public comment for permit reissuance, and for public education.

Proposed § 122.21(j)(1)(v) would require the applicant to report the facility's design flow rate and the annual average daily flow rate for each of the past three years. This information enables the permitting authority to calculate limits appropriate to the POTW, to alert the permitting authority to the need for flow restrictions or facility expansion, and to compare design and actual flows.

Proposed § 122.21(j)(1)(vi) would require information on the type of collection system used by the facility. The applicant would also identify whether the collection system is a separate sanitary system or a combined storm and sanitary system. The

applicant would also estimate the percent of sewer line that each type comprises. Familiarity with the type of collection system enables the permit writer to anticipate combined collection system overloading in wet weather. The current application form, Standard Form A, requests that the applicant also provide the length of the collection system (in miles). The proposed rule does not include this requirement because the Agency does not believe that such information is useful to the permit writer.

Proposed § 122.21(j)(1)(vii) would also require information on inflow and infiltration. Inflow is the uncontrolled entrance of water into the collection system from surface sources such as unsealed manholes. Infiltration is water that enters the collection system through deteriorated or defective pipes, joints, and connections. Both conditions may indicate the need for special permit conditions (such as best management practices) to reduce the inadvertent flow of water to the POTW. EPA requests comment on the availability of inflow and infiltration information at POTWs. This provision would also request information on steps the facility is taking to minimize inflow and infiltration.

Proposed § 122.21(j)(1)(viii) would require the applicant to provide a topographic map that includes information on the layout of the treatment plant, including all unit processes; intake and discharge structures; wells, springs, and other surface water bodies; sewage sludge management facilities; and the location(s) at which hazardous waste enters the treatment plant by truck, rail, or dedicated pipe. This provision reflects the topographic map requirements of § 122.21(f)(7), and is more specifically designed to include features most likely to be found at a POTW.

Proposed § 122.21(j)(1)(ix) would require the applicant to submit a process flow diagram or schematic, together with a narrative description. The permit writer uses this information to develop secondary treatment and water quality-based permit requirements, as well as other applicable permit conditions.

Proposed § 122.21(j)(1)(x) would require information about bypasses, which are intentional diversions of wastestreams from any part of a treatment plant. Regulations governing bypasses are set forth at 40 CFR 122.41(m). Facilities experiencing bypasses are required to estimate the frequency, duration, and volume of bypass incidents, and the reasons why

bypasses have occurred. Information on bypasses is used by the permit writer to develop appropriate permit limits and conditions for these discharges.

Proposed § 122.21(j)(1)(xi) would require general information regarding discharges to waters of the United States as well as discharges to destinations other than surface waters. This information enables the permit writer to account for all wastewater that enters the POTW, regardless of whether or not it is discharged directly to receiving waters. From a watershed permitting standpoint, permitting authorities may use this information to identify flows that individually or collectively may have an impact on the watershed, whether or not they are discharged directly into waters of the U.S.

If any effluent is discharged to surface impoundments with no discharges to waters of the U.S., the applicant would report the location of each surface impoundment, the annual average daily volume discharged to each surface impoundment, and whether the discharge is continuous or intermittent. If effluent is applied to the land, the applicant must provide the site location, the site size, and the annual average daily volume of effluent applied. The applicant must also state whether land application is continuous or intermittent. This information alerts the permit writer to the potential for point source discharges to arise from land application sites under certain circumstances, such as cold weather or high volume discharges, or from surface impoundments.

Proposed § 122.21(j)(1)(xi) would also require the applicant to report whether wastewater is discharged to another treatment works, the means by which the wastewater is transported, the average daily flow rate to that facility, and information identifying the receiving facility. The applicant must also identify the organization transporting the discharge, if other than the applicant. The permit writer needs this information in order to track the wastewater and verify the transfer.

Finally, proposed § 122.21(j)(1)(xi) would require information on other types of disposal, such as underground percolation or injection. These types of disposal may result in the transfer of pollutants to waters of the U.S. through underground flows, and thus are of interest both to the permit writer in writing the permit and to the permitting authority in designing watershed protection strategies.

Proposed § 122.21(j)(1)(xii) would require the applicant to report whether the POTW is located on a Federal Indian Reservation, discharges to a receiving

water that is on a Federal Indian Reservation or upstream of and eventually flows through a Federal Indian Reservation. This information enables the permit writer to identify the proper permitting authority and applicable requirements, including applicable water quality standards.

Proposed § 122.21(j)(1)(xiii) would require the applicant to provide information about any scheduled facility improvements. Improvements to the facility may change its flow or removal efficiency, necessitating a permit modification. The permit writer may modify the permit when the improvement is complete, or may include alternate limits in the permit that would take effect upon completion of the improvement.

The current application form, Standard Form A, requests certain information about required improvements including information on dates for completion of the preliminary plan, completion of the final plan, awarding of contract, and site acquisition. EPA is proposing to delete these requirements but solicits comment on their usefulness. Standard Form A also requires the applicant to identify the authority imposing the improvement and the general and specific action codes. The Agency proposes to delete this requirement because permit writers have indicated that this information is unnecessary to writing the permit.

2. Information on Effluent Discharges

Proposed § 122.21(j)(2) of today's rule would require all POTWs that discharge effluent to waters of the U.S. to provide specific information for each outfall through which effluent is discharged to surface waters, excluding CSO outfalls. This information would be reported in Questions 17, 18, and 19 of the Basic Application Information part of proposed Form 2A. The applicant would be required to submit the information required for each outfall.

Proposed § 122.21(j)(2)(i) would require general information about each outfall. The applicant must specify the outfall number, location, latitude and longitude, distance from shore (if applicable), distance below surface (if applicable), and average daily flow (in million gallons per day). EPA enters the latitude and longitude points into the water quality data base STORET. Maps of the location of water discharges are developed to examine the relationship between NPDES outfalls and other areas of concern, such as drinking water intake points or sensitive ecosystems. This information is also used to establish water quality-based effluent limits appropriate for the particular

receiving water. The locational data requested by this question also supports the Watershed Protection Approach, because it provides Federal and State environmental managers with information they need to geographically locate discharge points.

Latitude and longitude would be required to be reported to the nearest second. This is consistent with EPA's Locational Data Policy (LDP) (See "Locational Data Policy Implementation Guidance, Guide to the Policy (March 1992)"). In accordance with this policy, all latitude/longitude measurements in Agency data collection should have accuracies of better than 25 meters (i.e., roughly, one second).

Proposed § 122.21(j)(2)(i) would require information about the interval and duration of effluent discharges that are seasonal or periodic. Such discharges arise from certain conditions, usually related to the process at an industrial user, whereby the industrial user discharges intentionally at specified times following treatment. For each outfall with an intermittent discharge, the applicant must report the annual frequency, duration, flow, and the months in which the discharge occurs. The permit writer uses this information to develop permit limits that reflect the intermittent nature of such discharges.

Proposed § 122.21(j)(2)(i) would also require the applicant to specify whether the outfall is equipped with a diffuser and the type of diffuser (e.g., high-rate) used. The permit writer uses this information to make mixing zone calculations. (See "Technical Support Document for Water Quality-based Toxics Control," EPA/505/2-90-001, March 1991.)

Most POTWs discharge treated effluent to surface waters such as streams or rivers. Proposed § 122.21(j)(2)(ii) solicits information that describes and identifies the receiving waters into which each outfall discharges. Information about the type of receiving water is useful to the permit writer because mixing zones and wasteload allocations may be calculated differently for different types of receiving waters.

This provision would also require the name of the watershed, the Soil Conservation Service watershed code, the name of the State management basin, and the United States Geological Survey hydrologic code. This locational information supports the Watershed Protection Approach, by providing Federal and State environmental managers with a means of locating dischargers within the U.S. Soil Conservation Service watershed

categorization system, a State's river basin categorization system, and the U.S. Geological Survey cataloging scheme. Some States, as well as EPA Regions, are implementing a basin management approach to watershed protection and will require the information requested by this question.

Proposed § 122.21(j)(2)(iii) would require information on the level of treatment for discharges from each outfall. The CWA requires POTWs, with some exceptions, to treat influent to the level of secondary treatment prior to discharge. Secondary treatment is defined at 40 CFR 133.102 in terms of five-day biochemical oxygen demand (BOD₅), total suspended solids (SS or TSS), and pH. Part 133 allows adjustments to the secondary treatment requirements for POTWs that meet certain criteria. In addition, some POTWs are subject to requirements for "treatment equivalent to secondary treatment," as described in § 133.105. Finally, some POTWs may have more advanced levels of treatment necessary, for example, to meet water-quality based standards for certain pollutants, such as nitrogen and phosphorous.

This provision would require data on design removal efficiencies for BOD₅ and SS. Information on these parameters is necessary in order for the permit writer to set pollutant limits that accurately reflect the pollutant removal that the POTW can achieve. It may also alert the permitting authority to the need for improvements to the treatment facility.

Proposed § 122.21(j)(2)(iii) would also require information on disinfection, which usually follows secondary or advanced treatment and which destroys bacteria, viruses, and other pathogens in the wastewater. Disinfection most commonly occurs through chlorination. Many POTWs also dechlorinate their effluent prior to discharge because excessive free chlorine in a wastewater discharge can cause aquatic toxicity in the receiving water.

3. Effluent Monitoring for Specific Parameters

The purpose of proposed § 122.21(j) and proposed Form 2A is to provide the permit writer with the minimum information necessary to issue to a POTW an NPDES permit that contains effluent limitations consistent with the goals of the CWA. EPA recognizes that the quality of a POTW's effluent depends on several factors, such as the number and type of industrial users of the POTW, and that not all POTWs need to report the same information to ensure developing NPDES permits to achieve designated uses of the Nation's waters.

Hence, EPA proposes a tiered approach to collect needed effluent monitoring information.

The Agency proposes to require all POTWs to report effluent monitoring information for the 17 parameters listed at proposed 40 CFR Part 122, Appendix J, Table 1 ("Effluent Parameters For All POTWs") (see also proposed Form 2A, Basic Application Information, question 19). These parameters have a high likelihood of being present in most POTW effluents.

EPA is proposing to require additional reporting of pollutant-specific data for POTWs with a design flow greater than or equal to 1.0 mgd; POTWs that have or are required to have a pretreatment program; and other POTWs required to provide this information to the permitting authority. In general, the pollutants for which additional data would be required are those for which there are State water quality standards, other than dioxin, asbestos, and "priority pollutant" pesticides. Thus, the Agency would require, at a minimum, data on those pollutants listed at proposed 40 CFR Part 122, Appendix J, Table 2 ("Effluent Parameters For Selected POTWs and Treatment Works Treating Domestic Sewage") (see also proposed Form 2A, Part A, Supplemental Application Information: Expanded Effluent Testing). The Agency would not require data, unless otherwise specified by the permitting authority, on those pollutants listed at proposed 40 CFR Part 122, Appendix J, Table 3 ("Other Parameters for Treatment Works Treating Domestic Sewage And Selected POTWs").

Proposed § 122.21(j)(3) would require that data be separately provided for each outfall through which treated sanitary effluent is discharged to waters of the United States. Further, EPA recognizes that a POTW's effluent may have similar qualities at more than one of its outfalls. EPA thus proposes to allow applicants to provide the effluent data from only one outfall as representative of all such outfalls, where two or more outfalls with substantially identical effluents, and with the approval of the permitting authority on a case-by-case basis. For outfalls to be considered substantially identical, they should, at a minimum, be located at the same plant, be subject to the same level of treatment, and have passed through the same types of treatment processes. The Agency solicits comment on this approach and, particularly, on whether data should be separately collected from all such outfalls. Alternatively, should applicants generally be encouraged to follow this approach rather than

selectively approved on a case-by-case basis?

EPA proposes that effluent and monitoring data submitted to the permitting authority meet the following conditions:

1. Maximum Period of Sample Collection: All data summarized in response to these questions is proposed to be collected within a 3-year period preceding the permit application date.

2. Minimum Number of Daily Sample Analyses: Results from a minimum of three separate daily sample analyses (pollutant scans) are proposed to accommodate data needs for each analyte on which information is requested. Additional samples might be required on a case-by-case basis.

3. Seasonal Considerations: For most POTWs, EPA expects that the three, or more, sets of results for daily sample analyses summarized in response to these information needs would represent typical daily discharges occurring during at least three different calendar seasons. For most applicants, EPA proposes to require that a minimum of 4 months and a maximum of 8 months separate at least one pair of the daily sample analysis results included in the summary. Applicants unable to meet this time requirement due to, for example, periodic, discontinuous, or seasonal discharges could obtain alternative guidance on this requirement from their permitting authority. Permitting authorities might alter this requirement to address considerations of specific POTWs.

4. Testing Methods: Sampling and analysis is proposed to be conducted in accordance with methods approved under 40 CFR Part 136. Applicants would be expected to use methods that enable pollutants to be detected at levels adequate to meet water quality-based standards. Where no approved method can detect a pollutant at the water quality-based standards level, applicants would be expected to use the most sensitive approved method. If the applicant believed that an alternative method should be used (e.g., due to matrix interference), the applicant would need to obtain prior approval from the permitting authority. If an alternative method approved in accordance with 40 CFR Part 136 is specified in the existing permit, the applicant would be expected to use that method unless otherwise directed by the permitting authority. When no approved analytical method exists, an applicant could use a suitable method and provide a description of the method. "Suitable method" means a method that is sufficiently sensitive to measure as close to the water quality-based

standard as possible. The permit writer needs to know which testing methods are used in order to assess the technical validity of the results.

5. Daily Samples: For most POTWs, sampling is proposed to be conducted using composite samples mixed on a flow-proportional basis over a 24-hour period from at least eight sample aliquots (100 ml minimum) collected using an automated sample collection device. The flow-proportional basis would involve either varying the intervals between the collection of equal volume samples or varying the sample volumes collected over equal interval collection periods. The reason for using automated samplers is that they are designed to make the necessary adjustments according to the rate of flow.

For POTWs where automated sample collection devices are not available, it is proposed that appropriate daily composite samples for analysis would be produced by mixing at least four sample aliquots (100 ml minimum), each collected to represent typical segments of the operating day effluent flows.

Because pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and bacterial indicators cannot be properly sampled by continuous sampling devices, summarized results for each daily analysis are proposed to be based on individual analysis of a minimum of four grab samples collected to represent typical effluent flows over the operating day. A grab sample has 100 ml minimum volume, collected over 15 minutes or less.

For effluents from treatment ponds or other impoundments that have retention times of greater than 24 hours, single grab samples (100 ml minimum collected over 15 minutes or less) would be considered adequate to represent daily conditions for all analytes reported.

6. Maximum Data Summarization Requirements: EPA recognizes that not all analytes are sampled and analyzed at the same frequency for effluents from a single POTW or across all POTWs. EPA thus proposes that summarized results for analytes should include all data collected over the preceding three-year period, ending the calendar quarter preceding the permit application date (providing, for example, a total of 3 annual samples or 12 quarterly samples summarized per analyte, as well as any other samples taken by the applicant).

For those analytes sampled and analyzed at monthly or more frequent intervals, EPA proposes that applicants only summarize and report data collected over a single one-year period

(e.g., providing a summary of 12 monthly samples, together with any other samples taken during that period, per analyte). The one-year period included in this data summarization interval would end the calendar quarter preceding the permit application date.

Applicants would be required to indicate for each analyte the number of samples summarized and whether each summary represents a one or three year summarization period.

7. All Data Must Be Reported: For each analyte, EPA proposes that all samples conducted and analyzed in accordance with 40 CFR Part 136 during the reporting period be reported (i.e., included with all other data for the period reported), regardless of whether or not they were required by the permitting authority or these proposed regulations.

8. Data Must Be Summarized: For each analyte, EPA proposes that applicants report the maximum daily discharge, expressed either as concentration or mass, of all of the samples reported. Applicants would also report the average daily discharge, expressed either as concentration or mass, of all the samples reported.

The Agency is considering requiring applicants to report only concentration numbers on the application or, alternatively, requiring that applicants who wish to report mass also provide flow information used in calculating the mass figures reported. Thus, applicants would be required to report the flow rate used in calculating the maximum daily discharge and the average of all of the flow rates used in calculating the average daily discharge.

Some States may wish to have individual pollutant data reports, rather than summary data, from applicants, either from all applicants or on a case-by-case basis, in addition to or instead of the summary data required by proposed § 122.21(j)(3). States would be encouraged to obtain this information in the manner considered most suitable to their needs.

9. Existing Data May Be Reported: Where the applicant has existing data for a given pollutant, and where such data meet the conditions described above, EPA proposes to allow the use of such data in lieu of data collected solely for the purpose of the permit application. If, for example, the applicant were to have pollutant data from two samples, only one more sample would be needed to meet the minimum requirement of three samples, assuming that other conditions were met. Also, where such data have previously been reported to the permitting authority, the permitting

authority could waive such requirements as having been satisfied.

The Agency proposes the above conditions in an effort to be clear about the nature of what needs to be reported. Accordingly, the Agency solicits comment on whether these conditions are sufficiently clear, on the one hand, or whether they are overly restrictive, on the other.

The Agency also solicits comment on each of the particular conditions described above. The Agency is particularly interested in comment on two of these conditions: whether three pollutant scans is the appropriate number to require; and whether the three-year requirement for reporting test data should be waived, as proposed, where sampling for pollutants is done on a monthly basis.

The analytical data proposed to be reported would result from a variety of analytical methods, with detection limits ranging from less than 1 ppb to more than 10 ppb. The toxic analytes that are of most concern at low concentrations are primarily analyzed by gas chromatography (GC), gas chromatography/mass spectrometry (GC/MS), inductively coupled plasma emission spectrometry (ICP), and atomic absorption spectrometry (AA), and high resolution capillary column gas chromatography/high resolution mass spectrometry (HRGC/HRMS). These methods have different numeric analytical endpoints, based upon detection (e.g., method detection limit) or quantification (e.g., minimum level) levels. In addition, the wide latitude of data reporting definitions and conventions in use in various regulatory programs complicates the generation and interpretation of analytical data reported with this proposal.

In order for permit writers to develop appropriate permit requirements, they must be able to establish whether a pollutant is present and whether a reasonable potential for environmental impairment exists, as defined by water quality standards and criteria. To properly make such determinations, permit writers require more complete data and documentation than has been previously supplied with the application form, because any ambiguity increases the likelihood that the permit writer will need to include in the permit limits that are near or below 10 ppb or, alternatively, additional monitoring requirements for those pollutants for which the data are ambiguous.

Thus, it is in the best interests of both the applicant and the permitting authority that the proposed rule would require that the method detection limit (MDL), minimum level (ML), or other

designated method endpoint, together with identification of the corresponding analytical methods used be stated in the permit application. Along with this information, the proposal would require applicants to submit pollutant data based upon actual sample values. In other words, even where test values are below the detection or quantification level of the method used, the actual data value should be reported, rather than reporting "non-detect" ("ND") or "zero" ("0") in such instances. If the endpoint of the method used is reported along with the actual sample results, the permitting authority will be able to determine if the data is in the "non-detect" range or "below quantification" range.

The Agency has provided guidance to the applicant in the proposed Form 2A instructions in order to minimize the conditions that lead to inaccurate sampling data. The Agency proposes that the permit applicant: (1) alert its laboratory to the analytical and detection limit requirements and the expectations for documentation; and (2) report the necessary documentation to ensure that the permit writer is fully informed as to the methods used and the results obtained. For more detailed information concerning analytical issues (acceptable methods, effluent-specific detection limits, and documentation of data and analytical problems), applicants should refer to the "Guidance on Evaluation, Resolution, and Documentation of Analytical Problems Associated with Compliance Monitoring", EPA 821-B-93-001, June 1993.

a. Pollutant Data Reporting Requirements for All POTWs

EPA has identified certain pollutants that are commonly found in POTW effluents, regardless of size, and for which permit limits may be necessary to prevent adverse effects on receiving waters. Proposed § 122.21(j)(3) would require each applicant, regardless of size, to provide monitoring information for the pollutants listed in proposed Appendix J, Table 1. These include the conventional pollutants (defined, at 40 CFR 401.16, as biochemical oxygen demand, total suspended solids, pH, fecal coliform, and oil and grease), as well as other parameters that are common to domestic wastestreams, such as ammonia (and other nitrogen compounds), and compounds of other origin, such as chlorine (which is used for disinfection during the treatment process).

The complete list is, as follows:

Flow
Temperature

Bacterial indicators (*E. coli*, Enterococci, Fecal coliform)
5-day biochemical oxygen demand (BOD₅ or CBOD₅)
Chlorine (total residual, TRC)
Kjeldahl nitrogen (total organic as N)
Oil and Grease
Total dissolved solids
Total suspended solids
pH
Phosphorus (PO₄-P)
Dissolved oxygen
Hardness (as CaCO₃)
Ammonia (as N)
Nitrate + Nitrite (as N)

The secondary treatment regulations at 40 CFR Part 133 describe the minimum level of effluent quality that must be attained in terms of BOD₅ (or CBOD₅), TSS, and pH, and specify technology-based criteria for each parameter. Control of BOD₅ (or CBOD₅) is necessary to ensure sufficient dissolved oxygen in the receiving water to protect aquatic life; BOD₅ (or CBOD₅) is also a key parameter in biological treatment systems. Extremely high levels of suspended solids in the POTW's influent can interfere with POTW operations. High TSS levels in the effluent also block light in the receiving water and inhibit photosynthesis. Permit writers use information for these, as well as all other parameters listed above, to set appropriate water quality-based limits for permit applicants. In instances where POTWs have been allowed to substitute chemical oxygen demand (COD) or total organic carbon (TOC) for BOD₅, in accordance with 40 CFR 133.104, applicants would report the substituted parameter.

EPA has determined that enterococci and *E. coli* are better biological indicator organisms than fecal coliform. From 1973 through 1982, the Agency studied marine and freshwater bathing beaches. These studies reveal strong correlations between instances of gastrointestinal illness and concentrations of certain indicator organisms at these beaches. That is, in both fresh and marine waters, enterococci and *E. coli* were strongly correlated with gastroenteritis. (For more information on this study, see "Ambient Water Quality Criteria for Bacteria—1986," EPA440/5-84-002, January 1986.)

Because high numbers of these organisms in receiving water indicate an increased potential for human gastrointestinal illness following swimming or ingestion, and because both enterococci and *E. coli* are contained in all domestic sewage, indicating the potential for gastrointestinal illness, EPA is

proposing to require all POTWs to test for these biological indicator organisms in their discharged effluents. The Agency is also proposing, however, to allow the use of fecal coliform as the biological indicator for those applicants where the applicable permitting authorities have not yet switched to monitoring requirements for enterococci and *E. coli*. EPA solicits comments on allowing the use of fecal coliform in cases where permitting authorities have not switched from using fecal coliform as the pathogen indicator. The Agency also solicits comment as to whether testing for enterococci and *E. coli* should be required at all before the Agency has developed approved test methods for these parameters.

The Agency proposes that all POTWs report chlorine and ammonia levels. EPA's experience with toxicity identification evaluations (TIEs) at many POTWs indicate that chlorine and ammonia frequently cause effluent toxicity. Additional studies also reveal frequent adverse effects by these compounds within receiving waters. Therefore, at POTWs that chlorinate their wastewaters without subsequent dechlorination prior to discharge, chlorine may be present in concentrations sufficient to cause toxicity in receiving waters. Ammonia, which is common in nearly all sanitary sewage, is highly toxic to aquatic life in its un-ionized form. The ratio of the relatively toxic un-ionized ammonia form (NH_3) compared with the considerably less toxic ionized ammonium form (NH_4^+) is dependent on pH and temperature.

Chlorine and ammonia are listed in many State water quality standards, and "The Quality Criteria for Water 1986" (EPA 440/5-86-001, also known as the "Gold Book") lists criteria for both pollutants. Chlorine and ammonia can react to form chloramines, which can be toxic, and are more persistent in the aquatic environment than elemental chlorine. In estuaries or ocean water, bromamines can also form. Analytical methods recommended for the quantification of total residual chlorine (TRC) also indicate the presence of chloramines and bromamines. If a disinfectant other than chlorine is used, the permitting authority has the discretion to require additional data for that disinfectant. If alternative disinfection technologies are used, the applicant must submit a description of the alternate process.

Depending on the type of treatment provided, different sampling regimes may be appropriately required. For example, POTWs that do not use chlorination for disinfection, and do not

otherwise use chlorine in their treatment processes, perhaps should not be required to sample for chlorine. The Agency solicits comment on whether to waive chlorine data from such POTWs.

EPA criteria for nitrate, nitrite, and phosphorus are published in The Gold Book. Because these parameters are prevalent in most POTW effluents and because of their impacts on receiving waters, EPA is proposing to require all applicants to test for them. Nitrogen and phosphorus are often limiting nutrients in marine and fresh water systems, respectively. Excessive loadings of nitrogen (discharged as ammonia (including ammonium), nitrate, nitrite, and organic nitrogen) and phosphorus (discharged as phosphate) can stimulate algae growth, interfering with shoreline aesthetics and recreational uses. In addition, decaying algae can reduce dissolved oxygen concentrations, thus impairing the aquatic environment. At concentrations not typically encountered in surface waters, nitrate is toxic to fish.

Today, EPA proposes monitoring and reporting requirements for total nitrate plus nitrite, Kjeldahl nitrogen, and total phosphate. EPA is proposing to request the reporting of nitrate plus nitrite, combined rather than separately, because the chemical equilibrium between the two forms can change rapidly when chemical conditions in effluents and receiving waters differ. Such differences can cause concentration ratios between these two nitrogen oxide forms to change rapidly shortly after effluents enter receiving waters. Thus, separately knowing the effluent concentrations of nitrate and nitrite often bears little significance to their likely concentrations shortly after discharge into receiving waters. Kjeldahl nitrogen concentrations (a measure of organic nitrogen concentrations) are requested to allow permit writers to evaluate the total concentration and total mass of nitrogen discharged, determined by summing concentrations of discharged ammonia, nitrate plus nitrite, and Kjeldahl nitrogen, when all are reported in equivalent nitrogen concentrations ($\text{NH}_3 - \text{N}$ and $\text{NO}_2 + \text{NO}_3 - \text{N}$). Phosphate is to be reported in equivalent phosphorus concentrations ($\text{PO}_4 - \text{P}$). Concentrations of elemental phosphorus in most effluents occur at less than potentially toxic levels; consequently, no reporting requirements are proposed for elemental phosphorus.

The Gold Book also provides criteria values on concentrations of oil and grease. Concentrations of oil and grease sufficient to create a sheen on the receiving water not only affect aesthetic

qualities of these waters, but may also reduce the re-aeration rate of the receiving waters, potentially contributing to dissolved oxygen sag problems. Oil and grease may also indicate the presence of other high-molecular-weight organic pollutants of concern, because they are often discharged with or act as a sink for such pollutants. Finally, oil and grease interfere with POTW operations. Therefore, today's proposal includes monitoring and reporting requirements regarding concentrations of oil and grease.

Standard Form A currently requires applicants to test for most of the parameters discussed above. Today EPA is proposing to delete reporting requirements for the following parameters, which are currently included on the list for which sampling is required on Standard Form A:

- Chemical Oxygen Demand
- Fecal Streptococci
- Settleable matter
- Total Coliform Bacteria
- Total Organic Carbon
- Total Solids

EPA is proposing to delete chemical oxygen demand (COD) and total organic carbon (TOC) because biochemical oxygen demand (BOD_5 or CBOD_5) is generally more relevant to municipal treatment systems. EPA is proposing to delete settleable matter and total solids because there is considerable overlap between these parameters and total suspended solids and total dissolved solids. The Agency believes that the two selected parameters provide sufficient information to permit writers. Finally, the Agency proposes to drop reporting requirements for fecal streptococci and total coliform bacteria because the Agency believes that the selected pathogens (*E. coli*, enterococci, and fecal coliform) are better indicators for risk. The Agency requests comments on its proposal to delete the above Standard Form A parameters from the proposed application requirements.

In addition to the parameters discussed above, Standard Form A requires that POTWs indicate the presence of (but not provide quantitative data for) certain pollutants, if known. Such pollutants include metals, as well as other toxic and non-conventional pollutants. The Agency is proposing to require that some POTWs sample and report on certain toxic (priority) pollutants, as described in the discussion, "Reporting of Additional Pollutants for Some POTWs" (at III.B.3.b). The Agency is proposing, however, not to include POTW reporting requirements for the following pollutants listed on Standard Form A:

Bromide
 Chloride
 Fluoride
 Sulfide
 Aluminum
 Barium
 Boron
 Cobalt
 Iron
 Manganese
 Titanium
 Tin
 Algicides
 Chlorinated Organic Compounds
 Pesticides
 Surfactants
 Radioactivity

A number of these parameters (including bromide, chloride, boron, cobalt, iron, manganese, titanium, and tin) are proposed for deletion because they are relatively less toxic than priority pollutants for which the Agency is proposing to require testing (see, "Reporting of Additional Pollutants for Some POTWs" (at III.B.3.b)); and the levels of these pollutants in most municipal discharges are low. EPA is proposing to delete algicides, pesticides, and chlorinated organic compounds because the Agency does not believe it is relevant to ask for information about these contaminants at this level of generality.

EPA considered, but does not include as part of today's proposal, requirements that all applicants test and report on sulfide and sulfate concentrations in effluents. Sulfide is of concern because the anaerobic decomposition of sewage and other naturally deposited organic material is a major source of hydrogen sulfide. EPA considered proposing monitoring requirements for sulfate because high sulfate concentrations, which are caused by sewer corrosion, are converted anaerobically to hydrogen sulfide. Hydrogen sulfide is toxic to aquatic life; it also biologically reoxidizes on sewer walls that are exposed to air, forming sulfuric acid that corrodes the concrete of the sewer channels. It was considered that, based on this monitoring information, the permit writer could set permit limits for sulfide and sulfate or to require appropriate best management practices. These monitoring requirements, however, were not included as part of today's proposed requirements because of the view that sulfide is rapidly converted to sulfate in aerobic waters, which rapidly dissipates its toxic risk. In most instances, maintaining monitoring requirements and permit limits for dissolved oxygen to maintain attainable uses of receiving waters will adequately safeguard receiving waters

from toxic risks due to sulfide or sulfate potentially contained in effluents. Regarding corrosivity within the sewer system, the Agency believes that, in general, the POTW is in a better position than the permit writer to address such concerns. Special considerations may lead to the requirement that some applicants submit analytical results for these chemicals, as determined on case-by-case basis. EPA invites comment on these conclusions.

The Agency also considered testing for surfactants, but is not proposing to require such testing as part of this rule because: most POTWs do not discharge surfactants at toxic levels; the Agency has not developed water quality criteria for surfactants; and sources are difficult to control. In cases where surfactants in municipal wastestreams occur at toxic levels, the Agency believes that whole effluent toxicity (WET) testing should reveal any toxicity arising from surfactants. EPA invites comment on this approach.

The Agency also considered including monitoring requirements for three additional nonconventional pollutants: aluminum, barium, and fluoride; because of their regular appearance in analytical results from the numerous pollutant scans reviewed during preparation of the proposed rule and because published criteria exist for these three conventional pollutants. But such requirements have not been included on the proposed rule for the following reasons:

(1) Toxicity problems related to excess aluminum concentrations, especially for aquatic organisms, occur primarily in acidic receiving waters (most often in waters with pH less than 6.0) having low hardness levels (i.e., concentrations of calcium less than 2.0 mg/l). The majority of effluent water analyses reviewed did not contain sufficient aluminum concentrations to likely impair beneficial uses of receiving waters;

(2) Although barium regularly appeared in the pollutant scans of effluents reviewed by EPA, the concentrations reported in all samples remained below the 1.0 mg/l Gold Book criterion value for barium in domestic water supplies; and

(3) According to the 1972 "Blue Book", potentially adverse physiological effects due to excess fluoride concentrations increase with increasing environmental temperatures. Consequently, recommended criteria for fluoride range from 1.4 to 2.4 mg/l for average annual air temperatures of 50 to 91°F. Concentrations for the majority of reported results from the many pollutant analyses reviewed by EPA

revealed that although fluoride was a regular constituent of effluents, in the majority of the instances it occurred at concentrations less than suggested Blue Book criteria.

At this time, based on information currently available to EPA, concentrations of aluminum, barium, and fluoride in the majority of effluents are generally less than those necessary to produce significant risk for beneficial uses of receiving water. As such, EPA concludes at this time that it is unwarranted to require all dischargers to monitor for these chemicals as part of the municipal application process. Individual permit writers can, nevertheless, require analysis of any or all of these chemicals, wherever treatment works or environmental considerations suggest that such requirements are warranted. Further, EPA intends to continually review this conclusion as more effluent monitoring results become available, and continues to seek informed input from outside EPA on this decision.

b. Reporting of Additional Pollutants for Some POTWs

As discussed above, the Agency proposes to require all POTWs to report information on pollutant parameters commonly associated with POTW effluents. Proposed § 122.21(j)(3) (see also, proposed Part A in the Supplemental Application Information part of Form 2A) requires the reporting of additional parameters listed in proposed Appendix J, Table 2, by those POTWs that the Agency believes are most likely to discharge toxic pollutants to receiving waters. Toxic pollutants may interfere with POTW performance or pass through the POTW to receiving waters, thus potentially causing adverse water quality impacts.

Certain POTWs discharge toxic organic and inorganic pollutants primarily as a result of contributions from non-domestic sources. Section 122.21(j)(3)(iii) of today's proposal requires the applicant to submit monitoring data for the pollutants listed in proposed Appendix J, Table 2, if the POTW meets any one of the following criteria: (1) The POTW has a design flow rate equal to or greater than 1.0 mgd; (2) the POTW has a pretreatment program or is required to have one under 40 CFR Part 403; or (3) the POTW is otherwise required to submit this data by the permitting authority.

POTWs with a design flow equal to or greater than 1.0 mgd are designated as "major" POTWs by the Agency. EPA estimates that roughly 25 percent of the approximately 16,000 POTWs nationwide have design flows of at least

1.0 mgd. The Agency has found that major POTWs have a high potential to discharge toxic pollutants because of the strong likelihood that they receive industrial wastewaters and because of the large number of substances entering the treatment works from various sources. Therefore, the Agency believes that it is necessary to collect toxic pollutant data from these POTWs.

EPA also proposes to require data on toxic pollutants from POTWs that are required to develop pretreatment programs under 40 CFR Part 403. A POTW is required to develop a pretreatment program if it receives discharges from significant industrial users that may interfere with the POTW or pass through the treatment works. Approximately ten percent (approximately 1,500) of all POTWs have or are required to develop pretreatment programs. Most POTWs with pretreatment programs are also major POTWs, and so this criterion only slightly expands the requirements of this provision.

In addition to POTWs with design flows greater than or equal to 1.0 mgd and POTWs with pretreatment programs, EPA is proposing to allow the permitting authority to require any other POTW to submit monitoring data for some or all of the pollutants listed in proposed Appendix J, Table 2. The Agency would recommend that the permitting authority require an applicant to perform a complete or partial pollutant scan if toxicity is known or suspected in a POTW's effluent. Alternatively, if the facility's effluent causes adverse water quality effects, or if the POTW discharges to an impaired receiving water, the permit writer could require the applicant to provide analytical results from a complete pollutant scan.

The permit writer could also require the applicant to test for these parameters depending on the number or kinds of industrial users. EPA is proposing to grant the permit writer such discretion because smaller POTWs that receive industrial contributions also have the potential to discharge toxic pollutants. Although a POTW with a design flow less than 1.0 mgd may not have as great a volume of toxic pollutants entering its treatment system as a larger POTW, the impact of its industrial users could easily be more pronounced due to other considerations, such as smaller treatment capacity or an effluent-dominated receiving stream. Testing for toxic pollutants would provide the information needed to write a protective permit for such a POTW.

The Agency solicits comments on the above criteria for determining which

POTWs must test effluent for the pollutants in proposed Appendix J, Table 2. The Agency also solicits comment on whether other POTWs should be required to sample for some or all of these pollutants. Alternatively, the Agency solicits comment as to whether other POTWs should be required to provide any existing data on these pollutants. Such data would be important information in conducting watershed assessments.

The proposed approach for determining which POTWs must submit data on toxic pollutants is not the only approach being considered by the Agency. Among the alternatives being considered is one that would expand upon the approach described above, and require toxics data from two groups of non-pretreatment minors, each of which includes about half of all minor POTWs. In this approach, POTWs with a population between 1,000 and 10,000 (and not otherwise required to report as described above) would be required to provide a single pollutant scan for the Metals, Cyanide, and Total Phenols and the Volatile Organics groups in proposed Appendix J, Table 2. POTWs with a population of less than 1,000 (and not otherwise required to report as described above) would be required to provide a single scan for certain metals (i.e., cadmium, chromium, copper, lead, nickel, zinc, silver, and mercury). The Agency specifically solicits comment on this alternative approach. Commenters are requested to address the suggested cutoff points for different levels of reporting, the pollutants for which reporting is suggested, and the number of samples that should be required.

EPA proposes that POTWs meeting the three criteria enumerated above monitor for the pollutants in proposed Appendix J, Table 2, and any other pollutants for which there are established State water quality standards. Proposed Table 2 is a subset of the priority pollutants list previously described. As discussed in the background discussion of this preamble, these pollutants are regulated under the CWA and have been identified by Congress and/or EPA as potential threats to human health or aquatic life. Proposed Table 2 also includes total phenols, a parameter commonly used as an indicator pollutant for certain priority pollutants. Also as discussed, EPA and most States have developed numeric criteria and standards for most of these pollutants.

Proposed Appendix J, Table 2 represents pollutants that have been identified in priority pollutant scans of effluent from POTWs. Permit writers will be able to use data on these

pollutants as a basis to derive appropriate permit limits.

The Agency is proposing to not require pollutant data for certain priority pollutants (i.e., dioxin, asbestos, and priority pollutant pesticides). Available information on the occurrence of asbestos, dioxin, and priority pollutant pesticides reveals that these pollutants rarely occur at detectable levels in POTW effluents. Absent information to the contrary, the Agency does not consider asbestos to be a pollutant of concern in municipal wastewater effluents. Dioxin, while nearly ubiquitous, is present in such minute amounts in those industrial outfalls where it is known to be present in relatively high concentrations, that the Agency does not believe that, in general, it is appropriate to require POTWs to monitor for the pollutant at the POTW outfall, due to the high level of dilution in municipal wastestreams. Permitting authorities may wish to require such monitoring on a case-by-case basis if there is reason to believe that dioxin may be present in measurable amounts. To the extent that priority pollutant pesticides, including, for example, DDT and PCBs, appear in municipal wastestreams, the Agency believes that their presence is due, for the most part, to background concentrations, rather than to new introductions by discharges to the POTW. Where these pesticides result in toxicity problems or where other conditions merit, the Agency believes that permitting authorities should require sampling for them on a case-by-case basis. In the alternative, the Agency is considering adding pesticides to the list of required pollutants in proposed Appendix J, Table 2. The Agency solicits comment on whether routine monitoring and screening should be required for pesticides from all POTWs meeting the criteria of proposed § 122.21(j)(3)(iii) or whether the proposed approach is the appropriate one.

EPA also solicits comment on alternative ways to collect information in permit application about pollutants that occur in low levels, such as dioxin, or that otherwise present water quality concerns even in highly dilute effluent. As discussed previously, the proposal would require information about significant industrial users from certain POTWs so the permit writer should have sufficient knowledge about the potential for pass through of such pollutants. The Agency is interested in commenters' views on the adequacy of SIU identification for the purposes of developing adequate POTW permit limitations. Proposed § 122.21(j)(3)

would also require that POTWs meeting the above criteria monitor for pollutants not listed in proposed Appendix J, Table 2, for which the State or EPA have established State water quality standards (see discussion in Background section of this preamble). A number of States have established water quality standards for pollutants not listed as CWA sec. 307(a) priority pollutants. For the reasons stated in the above paragraph, the Agency believes that it is appropriate to require sampling for these pollutants, as well.

In addition, EPA considered, but is not proposing, requiring applicants to monitor for other pollutants, such as those on the "Gold Book" list of Federal Water Quality criteria, those regulated under the Safe Drinking Water Act, or those on data bases such as the Toxics Release Inventory System (TRIS), the Aquatic Toxicity Information Retrieval data base (AQUIRE), and the Integrated Risk Information System (IRIS). The Agency determined that adding these other pollutants to the list of pollutants proposed would impose additional monitoring and reporting requirements on the applicant, at substantial additional cost, but without significant benefit. Additionally, not all pollutants on these lists have been assigned numeric criteria. Moreover, available information reviewed by EPA does not indicate that these chemicals occur with either sufficient frequency or at high enough concentrations in typical POTW effluents to support their inclusion among pollutants for which monitoring is proposed to be uniformly required.

Under today's proposal, in proposed 122.21(j)(3)(v), permit writers would have the option to require monitoring and reporting for any other potentially toxic chemicals for which the authority has a reasonable basis to suspect that such materials may be contained in POTW effluents. Such basis could include the presence of industrial users known to release chemicals not included among the pollutants for which routine analyses are otherwise required. EPA invites comments on all aspects of this proposal that would allow for case-by-case information requests that might otherwise extend the time involved in streamlined permit issuance procedures.

In addition, EPA solicits comment on whether to require applicants to summarize and report, as part of the application process, analytical results for any toxic pollutant determined during the three-year period preceding the application to be a known or likely constituent of the facility's discharge. That is, when an applicant has reason to know or suspect the presence of other

toxic constituents in their effluents, its reporting requirements would not necessarily be limited either to the general list of toxic pollutants provided by proposed Appendix J, Tables 1 and 2, or to specific monitoring requirements placed on the applicant by the permitting authority. EPA considers results from toxic release inventory (TRI) as providing one likely basis for information that could cause applicants to initiate additional effluent monitoring analyses during the application process.

Finally, the Agency is interested in providing flexibility where POTWs can demonstrate that the risk of occurrence of pollutants in the discharge is sufficiently small. The Agency seeks comment on whether POTWs could be exempted from providing information on specific pollutants where there are statistically valid data to allow the permitting authority to predict the absence of particular pollutants. In addition, EPA solicits comments on the appropriateness of exempting POTWs from providing information about certain contaminants which are detectable in only a small fraction of POTWs (e.g., less commonly occurring metals such as antimony) and which would not be expected to occur based on other data about the POTW or the indirect discharge.

Other approaches to collecting pollutant data were considered for proposal. EPA solicits comment on each of these, as follows:

A. Types of Industrial Contributors

This approach would have required monitoring for specific pollutants, depending on the identity of industrial users discharging to the POTW. Although this approach was supported by a number of commenters in the course of our outreach efforts, it appeared to be too difficult to implement for non-pretreatment POTWs. Non-pretreatment POTWs are not required to do user inventories of, for example, all categorical industries, and thus would probably be unaware of what monitoring data to provide. On the other hand, pretreatment POTWs would be required to provide entire priority pollutant scans if they had only 2-3 different types of industries. The Agency solicits comment on how, specifically, such an approach would work and how it would benefit applicants and provide permit writers with appropriate information.

B. TRI as a Basis for Determining Additional Pollutants for Sampling

It was suggested that we use TRI data to determine what additional pollutants for which to require sampling. Although

industrial user TRI reports are not currently provided to POTWs by TRI-reporting industries, such reporting could be required, for example, through the pretreatment program. Of course, permit writers may always request TRI data from EPA. At issue is whether the applicant should be required to provide additional monitoring data for pollutants reported through TRI. The Agency solicits comment as to whether this approach might be feasible and whether it would provide useful information to the permit writer that is not otherwise available.

C. Existing Pollutant Data from SIUs

In order to obtain information on pollutants that occur in POTW discharges in low concentrations, permit writers could make use of information provided to POTWs by SIUs during the term of the existing permit. The Agency solicits comment on this approach, and is particularly interested in whether such information could be provided in lieu of requiring end-of-pipe effluent data for certain pollutants (e.g., dioxin, pesticides, or other organic chemicals received principally from industrial sources).

D. Ambient Data

Another issue considered was whether or not to require POTWs to provide the results of ambient monitoring as part of the permit application. Although some have suggested that this information would be helpful for implementation of the watershed approach, States were generally opposed to requiring POTWs to collect ambient data. The view was expressed that it is the permitting authority's responsibility to collect this information, and not the POTW's responsibility to provide it. Nevertheless, the Agency is interested in soliciting comment as to whether such data should be required.

E. Bioaccumulation Data

Although analytical methods to assess bioaccumulation in the aquatic biota are available, they are costly compared to approved test methods for pollutants in effluent. Since WET tests are an indirect indicator for human health risks, the Agency is not proposing to require bioaccumulation data from POTWs. However, such data are directly relevant to human health risk considerations. Therefore, the Agency solicits comment on whether to require bioaccumulation data. Because of cost considerations, the Agency also solicits comment as to what tradeoffs, in terms of other types of reporting, might make such an approach acceptable.

4. Effluent Monitoring For Whole Effluent Toxicity

As discussed in the background section, the July 24, 1990, amendments to the General Pretreatment Regulations require that certain POTWs provide the results of whole effluent biological toxicity testing as part of their NPDES permit application (40 CFR 122.21(j)(1)-(3)). Such testing was required to have been conducted since the last NPDES permit reissuance or permit modification, under 40 CFR 122.62(a), whichever occurred later.

In today's proposed rule, EPA proposes to revise this provision. Proposed § 122.21(j)(4) sets forth these revised requirements. First, all POTWs are required to identify any biological tests the applicant believes to have been conducted within three years of the date of application.

Second, as in the existing regulation, the following POTWs would be required to conduct and provide the results of whole effluent biological toxicity (WET) tests:

(A) All POTWs with design influent equal to or greater than one million gallons per day;

(B) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(C) Other POTWs, as required by the Director, based upon consideration of the following factors:

(1) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and types of industrial contributors);

(2) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);

(3) Existing controls on point or non-point sources, including total maximum daily load calculations for the water body segment and the relative contribution of the POTW;

(4) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, one of the Great Lakes, or a water designated as an outstanding natural resource; or

(5) Other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW), which the Director determines could cause or contribute to adverse water quality impacts.

The Agency specifically solicits comment on whether the requirement to conduct WET testing should be extended to other POTWs. The Agency is considering several options, including:

(1) requiring all minor POTWs not covered under the above criteria to submit the results of a minimum of one WET test, so as to allow the permitting authority to scan for minor POTWs that may have toxicity problems; and

(2) where a State has identified a watershed as a priority watershed, requiring one or more WET tests for all POTWs discharging to the watershed.

Third, the Agency proposes to require WET tests for each outfall from the treatment works (not including CSOs), with exceptions for identical outfalls similar to those proposed for pollutant specific data, as discussed above. Proposed § 122.21(j)(4) would require that data be separately provided for each outfall through which treated sanitary effluent is discharged to waters of the United States. EPA proposes to allow the applicant, where the POTW has two or more outfalls with substantially identical effluents discharging to the same receiving stream, and with the approval of the permitting authority on a case-by-case basis, to provide the results of WET testing from only one outfall as representative of all such outfalls. For outfalls to be considered substantially identical, they should at a minimum be located at the same treatment plant, be subject to the same level of treatment and have passed through the same types of treatment processes. The Agency solicits comment on this approach and, particularly, on whether WET test data should be separately collected from all such outfalls.

The existing WET testing requirements do not specify the number or frequency of tests required, the number of species to be used, or whether to provide the results of acute or chronic toxicity tests. Proposed § 122.21(j)(4) sets minimum reporting requirements of four quarterly tests for a year, using multiple species (no less than two species, e.g., fish, invertebrate, plant), and testing for acute or chronic toxicity, depending on the range of receiving water dilution. This proposal is based in part on Agency guidance, and in part on Agency experience in the implementation of that guidance.

In March 1991, EPA issued guidance establishing Agency policy for WET testing protocols (see "Technical Support Document for Water Quality-Based Toxics Control (1991)," or "TSD"). In that document, the Agency recommended "as a minimum that three species (for example, a vertebrate, an invertebrate, and a plant) be tested quarterly for a minimum of a year" (see, TSD p. 58). In making this recommendation, the Agency explained that the use of three species is more

protective than two species since a wider range of species sensitivity can be measured. In practice, however, a number of permitting authorities are only requiring the use of two species. Since existing requirements for using three species are less common, the Agency proposes to require the use of "multiple species." The Agency proposes this as a minimum requirement, and does not intend it as a change in the policy recommendations outlined in the TSD.

In setting a minimum frequency of quarterly testing for a year, the Agency indicated that this was recommended to adequately assess the variability of toxicity observed in effluents, as follows:

Below this minimum, the chances of missing toxic events increase. The toxicity test result for the most sensitive of the tested species is considered to be the measured toxicity for a particular effluent sample.

The data generation recommendations * * * represent minimum testing requirements. Since uncertainty regarding whether or not an effluent causes toxic impact is reduced with more data, EPA recommends that this test frequency be increased where necessary to adequately assess effluent variability. If less frequent testing is required in the permit, it is preferable to use three species tested less frequently than to test the effluent more frequently with only a single species whose sensitivity to the effluent is not well characterized. (TSD, p. 59)

It is the Agency's understanding that many permitting authorities currently require quarterly testing. While other permitting authorities require less frequent monitoring, at least from some facilities, in many instances such information is being collected on a yearly basis. This proposal would only require one cycle of quarterly testing within three years of the date of the permit application (i.e., only once in five years). The Agency solicits comment on whether this is an appropriate frequency, and specifically whether permitting authorities should be allowed to waive quarterly testing on a case-by-case basis. Commenters should indicate what specific criteria would have to be met for such a waiver.

The current whole effluent toxicity testing requirements, at § 122.21(j), do not specify whether applicants should test for acute or chronic toxicity. An acute toxicity test is defined as a test of 96-hours or less in duration in which lethality (of the test organism) is the measured endpoint. A chronic toxicity test is defined as a long-term test in which sublethal effects, such as fertilization, growth, and reproduction, are usually measured, in addition to lethality. (TSD, p.4.)

The Agency proposes that testing for acute or chronic toxicity be based upon the ratio of receiving water to effluent at the edge of the mixing zone. The term "mixing zone" refers to an area around an outfall within which a State may allow ambient concentrations above water quality criteria levels. States may have two or more mixing zones (e.g., an acute mixing zone, beyond which acute criteria must be met, and a chronic mixing zone, beyond which chronic criteria must be met). Not all States allow calculation of effluent limitations using mixing zones, and mixing zones are not universally allowed by States that do allow use of mixing zones. For purposes of determining whether acute or chronic toxicity testing is appropriate, the ratio of receiving water to effluent should be considered at the point nearest to the outfall where water quality criteria are required to be met. This proposal incorporates the recommendations of the 1991 TSD, which stated that applicants should conduct acute or chronic testing based upon the following dilutions:

(A) Acute toxicity testing if the dilution of the effluent is greater than 1000:1 at the edge of the mixing zone;

(B) Acute or chronic toxicity testing if the dilution of the effluent is between 100:1 and 1000:1 at the edge of the mixing zone. Acute testing may be more appropriate at the higher end of this range (1000:1), and chronic testing may be more appropriate at the lower end of this range (100:1); and

(C) Chronic testing if the dilution of the effluent is less than 100:1 at the edge of the mixing zone. (See TSD, pp. 58–59.) In order to determine the proper dilution ratio, measurement should be made at the point where chronic criteria apply. Thus, where there is a chronic mixing zone, the dilution ratio should be measured at the edge of the chronic mixing zone. It may be inappropriate to use an acute test if there is too little dilution.

Although the Agency is not proposing to require that applicants follow these recommendations, the Agency believes that they are reasonable, based on the discussion in the TSD. For example, with regard to the use of chronic toxicity testing where the dilution ratio falls below 100:1, the Agency stated, "[t]he rationale for this recommendation is that chronic toxicity has been observed in some effluents down to the 1.0 percent effect concentration. Therefore, chronic toxicity tests, although somewhat more expensive to conduct, should be used directly in order to make decisions about toxic impact." (TSD, p. 59.) The Agency solicits comment as to whether these

recommendations should instead be added as requirements in the final rule.

The whole effluent toxicity testing requirements that currently exist, at § 122.21(j), do not specify which information must be reported as a result of such testing. To clarify reporting requirements for the applicant and the permit writer, EPA today proposes specific reporting requirements in § 122.21(j)(4). First, applicants required to perform WET tests under the proposed rule are required to indicate the number of tests performed since permit reissuance and since any modification of the permit pursuant to 40 CFR 122.62(a). It is up to the permitting authority to determine whether previously submitted results provide the equivalent of the information proposed to be required. Proposed § 122.21(j)(4)(v) sets forth in detail the information that the Agency believes will provide the permit writer with adequate information to determine whether the test was conducted in accordance with EPA methods and protocols and whether the reported results are otherwise valid. The Agency solicits comment on whether the information requested is the proper information to require or whether other information should be required, including for purposes of quality assurance. As in the current regulatory requirements, in conducting the testing, applicants must use EPA-approved methods. The Agency solicits comment on this approach.

Where biomonitoring data have been submitted to the permitting authority within three years of the permit application, applicants would be required to provide the dates on which such data were submitted and a summary of the results of each such test. Where any WET test conducted within three years prior to the permit application reveals toxicity, proposed § 122.21(j)(4)(vi) would require that applicants, at a minimum, provide any information they may have on the cause of toxicity. Further, applicants would be required to provide written details of any toxicity reduction evaluation conducted. Toxicity reduction evaluations (TREs) are used to investigate the causes and sources of toxicity and identify the effectiveness of corrective actions to reduce it. The purpose of a TRE is to help bring dischargers into compliance with water quality-based whole effluent toxicity requirements where monitoring indicates unacceptable effluent toxicity. The permitting authority may require a permittee to conduct a TRE in those cases where the discharger is unable to adequately explain and immediately

correct non-compliance with a whole effluent toxicity permit limit or requirement. TREs may be required of permittees under existing permits or through a variety of other legally binding mechanisms. Since the results from TREs may have considerable impact in the evaluation of municipal permit applications, this kind of information would need to be available to the permit writer. It is recommended that applicants conducting a TRE at the time of permit application would provide a brief summary of the status and results from the ongoing TRE.

The Agency solicits comment on all of the above proposed revisions to the existing WET test requirements.

5. Industrial Discharges, Pretreatment, and RCRA/CERCLA Waste

Today's proposed rule would require applicants to provide information on industrial (non-domestic) discharges to the POTW, particularly discharges from significant industrial users (SIUs). This information is to be required by proposed § 122.21(j)(5).

Proposed § 122.21(j)(5)(i) would require the applicant to list the total number of significant industrial users (SIUs) and categorical industrial users discharging to the POTW, to estimate the average daily flow from these users and from all industrial (non-domestic) users, and to estimate the percent of total influent contributed by each class of users. This information provides the permit writer with a means of determining the relative impact, individually and collectively, of industrial contributions to the POTW.

As defined in 40 CFR 403.3, the term "industrial user" means "a source of indirect discharge," which in turn is defined as the introduction of pollutants into a POTW from any non-domestic source regulated under sec. 307(b), (c), or (d) of the CWA. In general, this term encompasses industrial and commercial sources of toxic pollutants discharging to POTWs. Commercial entities such as hospitals, nursing homes, restaurants, offices, and stores may be included.

A categorical industrial user is any discharger subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N. "Significant industrial user" is defined at 40 CFR 403.3(t) as any categorical industrial user and any other industrial user that:

- (1) discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blowdown wastewater);
- (2) contributes a process wastestream which makes up 5 percent or more of

the average dry weather hydraulic or organic capacity of the POTW; or

(3) is designated as such by the control authority (40 CFR 403.12(a)) because of a reasonable potential to adversely affect the POTW's operation or violate pretreatment requirements.

Proposed § 122.21(j)(5)(ii) would require POTWs with approved pretreatment programs to describe any substantial modifications to the POTW's pretreatment program that have not yet been approved in accordance with 40 CFR 403.18. EPA is considering revising the pretreatment regulations to streamline approved program requirements. Such revisions may make the need for this information unnecessary.

Proposed § 122.21(j)(5)(iii) would require information on individual significant industrial users (SIUs) discharging to POTWs. This provision is similar to questions currently found on Standard Form A. The Agency desires to incorporate into the final rule provisions that reduce duplication of effort. One possible way is to allow the applicant to reference substantially similar information about SIUs previously submitted to the permitting authority rather than to resubmit the information. The Agency solicits comments on using this approach in the final rule and suggestions of other possible options. EPA is also considering whether to waive, either entirely or on a case-by-case basis, such reporting for any POTW with an approved pretreatment program under 40 CFR Part 403 that submits an annual report within the year preceding its application to the extent that the annual report contains information equivalent to that required in proposed Section M. The Agency solicits comment on this question.

The proposed provision requires POTWs to provide the following information for each SIU: Name and mailing address, description of the industrial processes affecting the discharge, principal products and raw materials, average daily volume of process and non-process wastewater discharged, and whether the SIU is subject to local limits or categorical pretreatment standards. The description of each SIU's industrial activity and its principal products and raw materials alerts the permit writer to the potential presence of pollutants in the discharge in concentrations that may be of concern to the POTW, and can be useful in establishing permit limits. Information on the average daily volume of process wastewater discharged helps the permit writer to estimate pollutant loads to the POTW. Knowing the

volume of non-process wastewater discharged will alert both the permit writer and the POTW to the possibility of hydraulic overload to the system, and will help the POTW minimize such occurrences.

Currently, Standard Form A requires the applicant to identify the quantities of product manufactured and raw materials used by each SIU. The Agency is not proposing to require this information in today's proposal because neither the amount of production nor the amount of raw materials used necessarily correlates directly to the toxicity of the waste stream. For example, the SIU might use all of the raw material and release little into the waste stream. The Agency is instead requesting a narrative description of products and raw materials involved in the industrial activity.

Standard Form A also requires the applicant to characterize each SIU's industrial discharge. Although this information may be necessary to establish permit limits at some POTWs, this question appears to be unnecessary. In many cases, the permit writer is able to determine parameters of concern from the principal products and raw materials for that industrial user. In other cases the permit writer may request this information on a case-by-case basis.

The proposed provision would also require the applicant to describe any problems at the POTW attributable to wastewater discharged by SIUs. Identification of such problems is necessary to set permit limits for pollutants that the POTW might not adequately remove, and should lead to other strategies for control of toxic pollutants, such as: more stringent local limits or other pretreatment requirements; best management practices, if the toxic pollutants appear to be from diffuse sources; or toxicity reduction evaluations (TRES), if toxicity testing shows that the effluent causes an excursion above water quality standards in the receiving stream. Instances of pass through and interference identified in this step will alert the permit writer to violations of the POTW's NPDES permit.

6. Discharges From Hazardous Waste Sources

Proposed § 122.21(j)(6) would require applicants to provide general information concerning discharges of RCRA hazardous wastes to POTWs and discharges from hazardous waste cleanup or remediation sites. The purpose of this information is to alert the permit writer to potential concerns

regarding the constituents of such discharges.

Proposed § 122.21(j)(5)(i) would require the applicant to provide information about any hazardous wastes, as defined under Subtitle C of the Resource Conservation and Recovery Act (RCRA), or authorized State law, that are delivered to the facility by truck, rail, or dedicated pipe. This requirement does not apply to RCRA hazardous wastes discharged to a sewer system that mix with domestic sewage before reaching the POTW, because the Domestic Sewage Exclusion (sec. 1004(27) of RCRA) provides that solid or dissolved material in domestic sewage is not solid waste as defined in RCRA, and therefore is not a hazardous waste.

If the POTW receives RCRA hazardous waste by truck, rail, or dedicated pipe, the applicant must list, for each waste received, the hazardous waste number, quantity, and method by which it is received. The permit writer would use this information to coordinate appropriate RCRA requirements including, where appropriate, additional permit terms to address such requirements. In addition, this information will enable permitting authorities to identify potential impacts in the POTW's discharge.

In order to establish appropriate permit requirements, the permit writer also needs to be aware of wastewaters discharged to the POTW that originate from remedial activities conducted under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the RCRA corrective action program, or other authorities. POTWs are sometimes used for the disposal of wastewaters generated during remediation of CERCLA (Superfund) sites or during RCRA corrective action activities at industrial facilities. Paragraphs (ii)-(iv), in proposed § 122.21(j)(6), would require the applicant to identify wastewaters from remedial activities known or expected to be received during the life of the permit, the origin of such wastes and the treatment, if known, that such wastes receive prior to entering the POTW. This information is intended to help the permit writer decide whether to establish additional monitoring or permit requirements for the effluent and sewage sludge.

7. Combined Sewer Overflows

In developing permit requirements to meet BAT/BCT using BPJ and to meet applicable water quality standards for CSO discharges, the permit writer requires certain information. To ensure that the permit writer has the necessary

information, EPA proposes to require information that reflects the Agency's 1994 CSO Control Policy (see discussion in background section). This paragraph is intended to complement, and not overlap, other reporting that POTWs may be required to provide by the NPDES authority in accordance with the CSO Control Policy.

Proposed § 122.21(j)(7)(i) would require information about the combined sewer system (CSS), including a system map and system diagram that describe the relevant features of the system. Applicants are also required to identify the number of CSO discharge points to be covered by the permit application. Because municipalities with CSOs often have more than one treatment plant, different POTW permits may include different outfalls from their CSS.

Similarly, proposed § 122.21(j)(7)(ii) would require that applicants provide information on each outfall specifically covered by the application. This includes some locational information similar to that for outfalls of treated effluent in proposed § 122.21(j)(2), paragraphs (i) and (ii). As discussed previously, this sort of locational data is consistent with Agency policy concerning the reporting of such information. It also provides permitting authorities with a means of locating dischargers within the U.S. Soil Conservation Service watershed categorization system, a State's river basin categorization system, and the U.S. Geological Survey cataloging scheme.

This provision would also require information about any monitoring conducted on the outfall by the applicant and any CSO incidents that occurred in the year previous to the permit application. Finally, proposed § 122.21(j)(7)(ii)(E) would require the permittee to identify any significant industrial users (see discussion on pretreatment and industrial user information) that contribute to the CSO and to describe any known water quality impacts, such as beach or shellfish bed closings and fish kills. The Agency considers this to be a minimal amount of information to be provided to the permit writer, inasmuch as the permit writer must have adequate information to specifically authorize discharges at each of the identified outfalls.

8. Contractors

Proposed § 122.21(j)(8) would require the applicant to identify all contractors responsible for any operation or maintenance aspects of the POTW and to specify such contractors' responsibilities. This information

enables the permit writer to determine who has primary responsibility for the operation and maintenance of the POTW, and thus determine whether a contractor should be included on the permit as a co-permittee.

9. Certification

Proposed § 122.21(j)(9) would require the signature of a certifying official in compliance with 40 CFR 122.22, which requires the signature of a certifying official on all NPDES applications. The certification would apply to all attachments identified on the application form, as well as any others included by the applicant.

10. Revision to Pretreatment Program Requirements

Existing § 122.21(j)(iv) requires applicants with a pretreatment program to provide a technical evaluation of the need to revise local limits, under 40 CFR 403.5(c)(1). Since 1990, when that requirement was promulgated, the Agency has received numerous requests to change the provision to make it effective after the date of permit issuance. The concern has been raised that a POTW most needs to review its local limits after permit reissuance, when new permit limits are in place, rather than prior to permit reissuance.

The Agency agrees with these comments and proposes to make this change. In order to be clear, the provision has been reworded and is proposed to be moved to 40 CFR 403.8(f)(4), with the existing POTW pretreatment program requirements. The Agency solicits comment on this approach.

C. Application Requirements for TWTDS (40 CFR 122.21(q))

Under § 122.21(d)(3)(ii), POTWs and other treatment works treating domestic sewage (TWTDS) are currently required to submit the sewage sludge information listed at § 501.15(a)(2) with their permit applications. Today EPA proposes regulatory language at § 122.21(q) to update the information that must be reported. Proposed revised § 501.15(a)(2) would reference the requirements of proposed § 122.21(q). EPA also proposes a new form, Form 2S, for collection of this information. Section (q) would require all TWTDS, except "sludge-only" facilities, to report information regarding sewage sludge generation, treatment, use, and disposal. The permitting authority may also require a "sludge-only" facility to submit a permit application containing this information. These proposed new requirements are intended to clarify existing sewage sludge application

requirements, as necessary to implement the Agency's Part 503 standards for sewage sludge use or disposal.

As with the proposed POTW application requirements, the Agency does not wish to require redundant reporting by TWTDS. Thus, the Agency is proposing to allow a waiver for information required to be reported under § 122.21(q) similar to that proposed for § 122.21(j). This would allow the Director to waive any requirements in proposed paragraph (q) if the Director has access to substantially identical information. The Agency solicits comment on this approach and the proposed conditions for allowing such a waiver.

Also as with the proposed POTW application requirements, the Agency also solicits comment on ways to allow the permit writer or permitting authority discretion in waiving particular information where the permitting authority determines that such information is not necessary for the application. In other words, there may be flexible ways to look at each applicant in light of the overall "matrix of characteristics" regarding a particular facility. Where, for example, historical data indicate that additional sampling is not warranted unless other conditions have changed, the Agency is considering waiving such sampling. Such flexibility would involve a holistic approach to implementing these proposed requirements, and the Agency solicits comment as to ways in which it could be accomplished without making these provisions entirely discretionary, so that one could predict the exercise of discretion. This might be particularly relevant on the second and subsequent rounds of permitting under these proposed provisions. The Agency also seeks comment on what information might be appropriate and what information might be inappropriate for such waivers.

1. Facility Information

Proposed § 122.21(q)(1) would require summary information on the identity, size, location, and status of the facility. Proposed paragraph (ii) would request that the facility location be described by latitude and longitude to the nearest second. This information meets the specifications of EPA's Locational Data Policy and supports the Watershed Protection Approach, by providing permit writers and other Federal and State environmental managers with a means of geographically locating potential sources of polluted runoff. EPA believes that this change would

merely clarify, without expanding, an existing reporting requirement.

2. Applicant Information

Proposed § 122.21(q)(2) would require information concerning the identity of the applicant and its status as a Federal, State, private, public, or other entity.

3. Permit Information

Proposed § 122.21(q)(3) restates the § 501.15(a)(2)(v) requirement that the applicant list the facility's NPDES permit number and any other permit numbers or construction approvals received or applied for under various authorities.

4. Federal Indian Reservations

Proposed § 122.21(q)(4) clarifies existing § 501.15(a)(2)(iv), which asks only "whether the facility is located on Indian Lands." A sewage sludge use or disposal permit, however, may cover activities occurring beyond the boundaries of the "facility." Therefore, the proposed paragraph asks whether any generation, treatment, storage, land application, or disposal of sewage sludge occurs on a Federal Indian Reservation. EPA believes that this information will better enable the permit writer to identify the proper permitting authority and applicable requirements.

5. Topographic Map

Proposed § 122.21(q)(5) would require the applicant to submit the following information on a topographic map (or maps) depicting the area one mile beyond the property boundaries of the TWTDS: All sewage sludge management facilities, all water bodies, and all wells used for drinking water listed in public records or otherwise known to the applicant within 1/4 mile of the property boundaries. This proposed requirement is different from the existing topographic map requirement at § 501.15(a)(2)(vi) in that the proposed requirement asks for information on use and disposal sites rather than just disposal sites. EPA believes that it is just as important to get information on land application sites as on disposal sites. Neither the existing nor the proposed requirements request a map for sites that extend more than a mile beyond the TWTDS's property boundary. The permitting authority could request maps of all use or disposal sites if they believe that this information is necessary to develop adequate permits. EPA requests comments on whether maps should be required for all use or disposal sites, or whether this requirement should be modified in some other way.

6. Sewage Sludge Handling

Proposed § 122.21(q)(6) would require the applicant to prepare a flow diagram, and/or a narrative description that identifies all sewage sludge management practices (including on-site storage) to be employed during the life of the permit. EPA believes that this information is necessary because the applicant may employ sewage sludge management practices not covered under the more specific questions proposed in today's rule. To draft a complete permit, the permit writer must be aware of all sewage sludge storage, use, or disposal practices that may have an adverse affect on public health and the environment. EPA requests comments on whether more specific information about on-site and off-site storage of sewage sludge should be required of permit applicants.

7. Sewage Sludge Quality

Currently, § 501.15(a)(2)(vii) requires applicants to report "any sludge monitoring data the applicant may have." However, this requirement neither identifies the parameters that must be reported nor provides a mechanism for reporting this information. Proposed Form 2S and § 122.21(q)(7) would address this need by requiring monitoring data for specific parameters in sewage sludge that is used or disposed.

Proposed paragraph (i) of § 122.21(q)(7) would require all Class I sludge management facilities to submit the results of at least one toxicity characteristic leaching procedure (TCLP) conducted during the last five years to determine whether the sewage sludge is a hazardous waste. The TCLP is described in 40 CFR Part 261, Appendix II, and is a method for determining whether a solid waste exhibits the characteristic of toxicity, in accordance with 40 CFR 261.24. 40 CFR Part 503 does not establish requirements for the use or disposal of sewage sludge determined to be hazardous under the procedures in Appendix II of 40 CFR Part 261 and § 261.24. Hazardous sewage sludge must be used or disposed of in accordance with the hazardous waste regulations in 40 CFR Parts 261–268, or authorized State law. Using the results of the hazardous waste test, the permitting authority will determine which requirements apply to the use or disposal of the applicant's sewage sludge. EPA requests comments on whether facilities should be allowed to use a method other than a TCLP to show that their sewage sludge is non-hazardous and whether non-Class I

sludge management facilities should be required to perform a TCLP.

Proposed paragraph (ii) of § 122.21(q)(7) would require all applicants to submit data on individual pollutants in the sewage sludge. Existing data could be submitted if it were two years old or less. EPA is proposing a two-tier approach for collection of pollutant data that is based on whether the treatment works has an industrial wastewater pretreatment program.

Under the two-tier approach, Class I sludge management facilities would submit sewage sludge data for the pollutants listed in proposed 40 CFR Part 122, Appendix J, Table 2 ("Effluent and Sewage Sludge Parameters for Selected POTWs and Treatment Works Treating Domestic Sewage") and Table 3 ("Other Effluent and Sewage Sludge Parameters for Treatment Works Treating Domestic Sewage and Selected POTWs") and for other selected pollutants, as part of the application for a permit for the use or disposal of sewage sludge. Other TWTDS would be required to submit data for the pollutants regulated in Part 503 and for other selected pollutants.

a. Class I sludge management facilities. A Class I sludge management facility is any POTW required to have an approved pretreatment program under 40 CFR 403.8(a) and any TWTDS classified as a Class I sludge management facility because of the potential for the TWTDS's sewage sludge use or disposal practice to affect public health and the environment adversely. Under today's proposal a Class I sludge management facility would submit sewage sludge concentration data for all the priority pollutants, except asbestos, as listed in Tables 2 and 3 of Appendix J; for the Part 503 pollutants; and for total kjeldahl nitrogen (TKN), ammonia, nitrate, and phosphorus (total).

EPA is proposing to require Class I sludge management facilities to submit data on the priority pollutants because they are known to have adverse effects on human health and the environment and are of concern to the general public. Since sewage sludge from Class I sludge management facilities has an industrial component, it is important to reassure the public that this sewage sludge will not cause harm if it is used or disposed according to Part 503. A pollutant scan every five years should help promote the beneficial use of sewage sludge by demonstrating its quality. If any pollutants that are not regulated by Part 503 show up in the scan, the results would enable the permitting authority to determine whether additional permit

conditions (i.e., in addition to the requirements in Part 503) are necessary to protect public health and the environment.

Many Class I sludge management facilities are already required by their pretreatment program to monitor their sewage sludge for these pollutants. In addition, many State sewage sludge programs require monitoring for some or all of these pollutants. EPA seeks comments on this approach.

Section 405(d) of the CWA contemplates a phased approach to establishing numerical limits for pollutants in sewage sludge that is used or disposed. Moreover, sec. 405(d)(2)(D) of the CWA provides that "[f]rom time to time, but not less often than every 2 years, the Administrator shall review the regulation * * * for the purpose of identifying additional pollutants and promulgating regulations for such pollutants * * *."

The Standards for the Use or Disposal of Sewage Sludge that were published on February 19, 1993, constitute Round One of EPA's sewage sludge standards program. The Agency has identified a tentative list of pollutants for which limits will be established in a Round Two regulation (i.e., an amendment to the Round One regulation) and has announced a tentative schedule for the publication of that amendment.

Pollutants on the tentative list for the Round Two regulation include acetic acid (2,4,-dichlorophenoxy), aluminum, antimony*, asbestos, barium, beryllium*, boron, butanone (2-), carbon disulfide, cresol (p-), cyanide (soluble salts and complexes)*, dioxin/dibenzofuran (all monochloro to octochloro congeners), endsulfan-II, fluoride, manganese, methylene chloride*, nitrate*, nitrite*, pentachloronitrobenzene, phenol*, phthalate (bis-2-ethylhexyl)*, polychlorinated biphenyls (co-planar), propanone (2-), silver*, thallium*, tin, titanium, toluene*, trichlorophenoxyacetic acid (2,4,5-), trichlorophenoxypropionic acid ([2-(2,4,5-)], and vanadium. EPA has indicated that it retains the discretion either to add to or delete pollutants from the above list of pollutants.

The Agency is considering adding the above pollutants to the list of pollutants for which data have to be submitted by Class I sludge management facilities with a permit application. Eleven of the above pollutants are included in Tables 2 or 3 of proposed Appendix J or are nutrients (see pollutants marked with an asterisk). Therefore, this approach would require that Class I sludge management facilities submit data for 20

additional pollutants. The Agency requests comments on this proposal.

b. All TWTDS. Part 503 contains pollutant limits for ten inorganic pollutants for sewage sludge that is land applied (subpart B), three inorganic pollutants for sewage sludge placed on an unlined surface disposal site (subpart C), and five inorganic pollutants for sewage sludge fired in a sewage sludge incinerator (subpart E). There are no pollutant limits in Part 503 for sewage sludge placed on a lined surface disposal site or for sewage sludge placed in a municipal solid waste landfill unit.

The pollutants for which limits are included in Part 503 are arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, and zinc. Part 503 also contains an operational standard for pathogens (i.e., fecal coliform, *Salmonella* sp. bacteria, enteric viruses, and viable helminth ova) and for total hydrocarbons (THC). The operational standards for pathogens are values that can not be exceeded in sewage sludge and the operational standard for THC is a value that can not be exceeded in the air emissions for a sewage sludge incinerator stack.

With today's rulemaking, EPA proposes that applicants for a sewage sludge use or disposal permit submit sewage sludge concentration data for all of the Part 503 inorganic pollutants. The permitting authority needs to determine whether a TWTDS can change its use or disposal practice if the need arises. Data for all of the Part 503 pollutants will help the permitting authority make that determination.

The Agency is aware that many TWTDS employ only one sewage sludge use or disposal practice, and that such treatment works may object to submitting data for pollutants that are not regulated for that practice. Nevertheless, EPA believes that the additional information burden to collect and submit data for all of the Part 503 pollutants is offset by the value of the data to the permitting authority. The Agency solicits comments on whether an applicant should be required to submit data only for the pollutants regulated for the TWTDS's use or disposal practice.

As indicated previously, EPA also proposes that all applicants submit sewage sludge data for TKN, ammonia, nitrate-nitrogen, and total phosphorus with a permit application. In addition, the percent solids of the sewage sludge that is used or disposed of would have to be reported. Percent solids is required to ensure that all sewage sludge data can be converted to dry weight values.

Information on the nitrogen and phosphorus content of sewage sludge is needed for several reasons. One important use of the nitrogen data is to help the permit writer to evaluate the design of the agronomic rate for a land application site. Part 503 requires that sewage sludge be land applied at a rate that is equal to or less than the agronomic rate for the application site. The Agency also can use the data on nutrients in sewage sludge in future considerations as to whether to establish limits for nitrogen and phosphorus in sewage sludge.

The Agency is also considering adding certain pathogens to the list of pollutants for which data would be required with an application. These include *Salmonella* sp. bacteria, enteric viruses, and viable helminth ova. Part 503 contains density levels for these microorganisms that cannot be exceeded in sewage sludge that is used or disposed. In addition to pathogens, the Agency is also considering requesting data for fecal coliform, which is used in Part 503 as a pathogen indicator. The permitting authority would use these data to determine whether the sewage sludge meets the Class A or Class B pathogen requirements in Part 503. Pathogen data only would have to be submitted by persons who land apply or place sewage sludge in a surface disposal site. EPA is seeking comments on this issue as part of today's proposal.

Results of current efforts within the Agency may require that limits be established prior to the Round Two sewage sludge regulation, for dioxin/dibenzofuran and co-planar polychlorinated biphenyls (PCBs) in sewage sludge that is used or disposed. Dioxin/dibenzofuran is a carcinogen that is highly toxic in low concentrations. Because the chemical structure of co-planar PCBs is similar to the chemical structure of dioxin/dibenzofuran, they are expected to have similar human health effects (i.e., toxic in low concentrations). Data for these two pollutants could be used to develop Part 503 limits for these pollutants or to evaluate the Part 503 limits. For this reason, the Agency is considering requesting all TWTDS to submit data for these pollutants with a sewage sludge permit application. EPA seeks comments on whether TWTDS who are not Class I sludge management facilities should be required to submit data on these two pollutants.

8. Requirements for a Person Who Prepares Sewage Sludge

Proposed § 122.21(q)(8) identifies permit application information that a person who prepares sewage sludge for

use or disposal would be required to submit. A "person who prepares," as defined at 40 CFR 503.9(r), is "either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge." This section would thus pertain to any POTW or other treatment works that generates sewage sludge. It also would include facilities (such as composting operations) that receive sewage sludge from another facility and then derive a material from that sewage sludge.

Paragraphs (i) and (ii) of proposed § 122.21(q)(8) would request information on the amount of sewage sludge "prepared" at the facility. This includes the amount generated (paragraph (i)) plus any other amount that is received from off-site (paragraph (ii)). These paragraphs are intended to clarify the existing requirement at § 501.15(a)(2)(x), which tells the applicant to report annual sludge production volume. Paragraph (ii) would also solicit information on sewage sludge treatment practices at any off-site facility from which sewage sludge is received. The off-site facility providing the sewage sludge is, by definition, also a "person who prepares," and, therefore, would also be subject to sludge permitting requirements. EPA believes that information on the delivering facility enables the permit writer to assess the quality of sewage sludge received by the applicant. It also fosters more appropriate allocation of permit requirements between the applicant's facility and an off-site "person who prepares."

As in the case of the Municipal Application regulations, the Agency desires to incorporate into the final rule provisions that reduce duplication of effort. One possible way is to allow the applicant to reference substantially similar information previously submitted to a permitting authority rather than resubmit the information. The Agency solicits comments on using this approach in the final rule and suggestions of other possible options.

Before sewage sludge is applied to the land or placed on an active sewage sludge unit, it must meet the requirements for pathogen reduction in § 503.32 and for vector attraction reduction in § 503.33. Therefore, paragraph (iii) of proposed § 122.21(q)(8) would request information on sewage sludge treatment processes at the applicant's facility, including pathogen or vector attraction reduction processes. The permit writer needs to know whether pathogen and vector attraction reduction requirements

are met at the applicant's facility and thus should be addressed in the applicant's permit. If these requirements are not met by the applicant, pathogen and vector attraction reduction must be met by a subsequent "person who prepares" or the owner/operator of a surface disposal site.

"Exceptional quality" (EQ) sewage sludge must meet the ceiling concentrations in 40 CFR 503.13(b)(1), the pollutant concentrations in § 503.13(b)(3), the Class A pathogen requirements in § 503.32(a), and one of the vector attraction reduction requirements in § 503.33 (b)(1) through (b)(8). Because of its high quality, "EQ" sewage sludge is not subject to the general requirements of § 503.12 or the management practices of § 503.14. Therefore, fewer permitting and permit application requirements pertain to facilities generating such sewage sludge. Proposed paragraph (iv) of § 122.21(q)(8) would ask for the amount of sewage sludge that is applied to the land. EPA believes that this information is all that is needed to develop sewage sludge conditions for such a facility. Under paragraph (iv), the applicant would not need to provide the other, more-detailed, information in proposed § 122.21(q)(8) paragraphs (v) and (vi) for sewage sludge meeting "EQ" criteria.

The existing requirement at § 501.15(a)(2)(viii) asks for the "name of any distributors when the sludge will be disposed of through distribution and marketing." This requires the names of any facilities that sell or give away "EQ" sewage sludge. EPA believes that "EQ" sewage sludge should be treated similarly to other fertilizers. Thus, the Agency believes that the names of distributors should not be required and is proposing to delete the requirement at § 501.15(a)(2)(viii). The Agency seeks comments on this approach.

Paragraph (v) of proposed § 122.21(q)(8) would seek information on sewage sludge that is not "EQ," but is nevertheless placed in a bag or other container for sale or give-away for application to the land. Under Part 503, such sewage sludge must meet the Class A pathogen requirements in § 503.32(a) and one of the vector attraction reduction requirements in § 503.33(b)(1) through (8). In addition, the sewage sludge must meet either the pollutant concentrations in Table 3 of § 503.13 or the annual pollutant loading rates (APLRs) in Table 4 of § 503.13. If this sewage sludge meets the Table 3 pollutant concentrations, it is "EQ" sewage sludge and thus would be subject to proposed paragraph (iv). Proposed paragraph (v) would only apply to sewage sludge subject to the

Table 4 APLRs that is placed in a bag or other container for application to the land. EPA proposes to require that the applicant employing this type of sewage sludge use provide the volume of sewage sludge placed in bags or other containers and a copy of all labels or notices that accompany the product being sold or given away.

Paragraph (vi) of proposed § 122.21(q)(8) would seek information about any other "person who prepares" who receives sewage sludge from the applicant's facility. This information helps the permit writer to identify which permit requirements should apply to the applicant and whether the subsequent preparer needs to obtain a permit. Paragraphs (C) and (E) of proposed paragraph (vi) would provide the permit writer with necessary information on the quality of the sewage sludge that is ultimately land applied. This information also enables the permit writer to identify activities of the subsequent "person who prepares" that may subject the applicant to additional regulation or permit requirements. Therefore, these requirements would ensure that the sewage sludge will meet all applicable Part 503 requirements at the time of land application, regardless of the number of parties involved. One possible way to obtain this information is to allow the applicant to reference substantially similar information previously submitted to a permitting authority rather than resubmit the information. The Agency solicits comments on using this approach in the final rule and suggestions of other possible options.

9. Land Application of Bulk Sewage Sludge

Proposed § 122.21(q)(9) would request information on sewage sludge that is land applied in bulk form. This section would apply only where the applicant's permit must contain all applicable Part 503 requirements for land application. This section would not apply if the applicant generates "EQ" sewage sludge subject to proposed § 122.21(q)(8)(iv), or if the applicant places sewage sludge in a bag or other container for sale or give-away for application to the land subject to proposed § 122.21(q)(8)(v). In neither of these cases is it necessary to control the ultimate land application through a permit and thus the applicant would not need to provide this information as part of the application. The section also would not apply if the applicant provides sewage sludge to another "person who prepares" subject to proposed § 122.21(q)(8)(vi). In this case, the ultimate land application would be

controlled by the subsequent "person who prepares."

Paragraph (i) of proposed § 122.21(q)(9) would clarify the existing requirement at § 501.15(a)(2)(x) which tells the applicant to report annual sludge production volume. Paragraph (ii) asks how the applicant will satisfy the § 503.12(i) notification requirement for land application sites in a State other than the State where the sewage sludge is prepared.

Paragraph (A) of proposed § 122.21(q)(9)(iii) would ask the applicant to identify the land application site. This question would request locational information which supports the Watershed Protection Approach, by providing permit writers and other Federal and State environmental managers with a means of geographically locating potential sources of polluted runoff.

Paragraphs (B) and (C) of proposed § 122.21(q)(9)(iii) would ask the applicant to identify the land application site owner and applier, if different than the applicant. EPA believes that this information is necessary in order to ensure that the permit is issued to the correct party. These proposed paragraphs would clarify and expand on existing requirements at § 501.15(a)(2)(viii).

One of the land application management practices in § 503.14 mandates that bulk sewage sludge shall not be applied to land at greater than the agronomic rate. Therefore, paragraphs (D) and (E) of proposed § 122.21(q)(9)(iii) would ask the applicant to identify the type of land application site, the type of vegetation grown on that site, if known at the time of permit application, and the vegetation's nitrogen requirement. This information enables the permit writer to calculate an appropriate permit management practice regarding agronomic rate. EPA recognizes that different crops may be grown on a site during the life of a permit. If the crop for a site is not known or likely to change, the applicant should submit whatever information is available.

Paragraph (F) of proposed § 122.21(q)(9)(iii) would request information on vector attraction reduction measures undertaken at the land application site. Before sewage sludge is applied to the land, it must meet the requirements for vector attraction reduction in § 503.33. These measures may be undertaken either by the "person who prepares" sewage sludge or by the operator of the land application site.

Paragraph (G) of proposed § 122.21(q)(9)(iii) would ask the

applicant to submit any existing ground-water monitoring data for the land application site. Section 503.14(d) states that bulk sewage sludge may not be applied to land at greater than the agronomic rate. Section 503.11(b)(2) explains that "agronomic rate" is the whole sludge application rate that minimizes the amount of nitrogen that passes below the root zone and into the ground water. EPA believes that permitting authorities need to review existing ground-water monitoring data for land application sites in order to ensure that sewage sludge application rates are appropriately protective of ground water.

Section 501.15(a)(2)(ix) asks for information necessary to determine if the site is appropriate for land application and a description of how the site will be managed. This requirement could be interpreted in different ways. Today's rule attempts to clearly specify the site management requirements in proposed paragraphs (D)–(G) of proposed § 122.21(q)(9)(iii). The permitting authority could request other site management information if it is needed to identify appropriate permit conditions.

Proposed § 122.21(q)(9)(iv) would request information that the permitting authority needs in order to verify whether the § 503.12(e)(2)(i) requirement for appliers of bulk sewage sludge subject to cumulative pollutant loading rates (CPLRs) has been met. A cumulative pollutant loading rate, as defined in § 503.11(f) is "the maximum amount of an inorganic pollutant that can be applied to an area of land." This information enables EPA to ensure that the CPLRs are not exceeded when more than one facility is sending sewage sludge subject to CPLRs to the same site.

Proposed § 122.21(q)(9)(v) restates the requirement in existing § 501.15(a)(2)(ix) for information on land application sites not identified at the time of permit application.

10. Surface Disposal

Proposed § 122.21(q)(10) requests information on sewage sludge that is placed on a surface disposal site. By definition, a sewage sludge surface disposal site is a TWTDS. Many surface disposal site owner/operators, however, would not have to complete this section, but would instead submit the limited background information required by § 122.21(c)(2)(iii). The applicant would be required to provide the information requested by proposed § 122.21(q)(10) only if the surface disposal site were already covered by an NPDES permit; if the owner/operator were requesting site-specific pollutant limits; or if the

permitting authority were requiring a full application.

Paragraph (i) of proposed § 122.21(q)(10) would clarify the existing requirement at § 501.15(a)(2)(x) which tells the applicant to report annual sludge production volume. Paragraph (ii) of proposed § 122.21(q)(10) would require that the applicant provide the name or number, address, telephone number, and amount of sewage sludge placed on each surface disposal site that the applicant does not own or operate. This paragraph would clarify and expand on existing requirements at § 501.15(a)(2)(viii). EPA believes that this information is necessary in order to ensure that the permit is issued to the correct party.

Paragraph (iii) of proposed § 122.21(q)(10) would request detailed information on each active sewage sludge unit at each surface disposal site that the applicant owns or operates. A "sewage sludge unit" is defined in § 503.21(n) as "land on which only sewage sludge is placed for final disposal." A "surface disposal site" is "an area of land that contains one or more sewage sludge units." Information on each active sewage sludge unit is necessary because Part 503 provides for different pollutant limits, monitoring requirements, and management practices for each unit. This information enables the permitting authority to establish proper permit conditions.

Paragraph (l) of § 122.21(q)(10)(iii) would request information on sewage sludge sent to the active sewage sludge unit by any facility other than the applicant's. This information helps the permit writer to determine which requirements apply to the surface disposal site owner/operator and which apply to the facility which sends sewage sludge to the surface disposal site. As previously mentioned, one way to reduce duplicate reporting, is to allow the applicant to reference substantially similar information already submitted to a permitting authority. The Agency solicits comments on using this approach in the final rule and suggestions for other options.

Paragraph (J) of proposed § 122.21(q)(10)(iii) would request information on vector attraction reduction measures undertaken at the active sewage sludge unit. Before sewage sludge is placed on an active sewage sludge unit, it must meet the requirements for vector attraction reduction in § 503.33. Since vector attraction reduction measures may be performed either by the facility preparing sewage sludge or by the surface disposal site owner/operator, EPA believes that both should be

required to supply information on their practices.

Section 503.24(n)(2) requires surface disposal sites to demonstrate by way of a ground-water monitoring program or certification that sludge placed on an active sewage sludge unit does not contaminate the underlying aquifer. In order to ensure that this requirement is implemented, paragraph (K) of proposed § 122.21(q)(10)(iii) would request information on ground-water monitoring programs or certifications. Because many communities rely on ground water as a source of drinking water, EPA believes that this information is necessary to protect public health and the environment.

After August 18, 1993, only surface disposal sites showing good cause may apply for site-specific pollutant limits. Paragraph (L) of proposed § 122.21(q)(10)(iii) would request the information necessary for the permit writer to determine whether such site-specific limits are warranted. This information would include a demonstration that the values for site parameters at the applicant's site differ from those used to develop the surface disposal pollutant limits in Part 503.

11. Incineration

Proposed § 122.21(q)(11) would request information on sewage sludge that is fired in a sewage sludge incinerator. According to § 503.41(k), a sewage sludge incinerator is "an enclosed device in which only sewage sludge and auxiliary fuel are fired." A sewage sludge incinerator is a TWTDS and is required to submit a full permit application.

Paragraph (i) of proposed § 122.21(q)(11) would clarify the existing requirement at § 501.15(a)(2)(x) which tells the applicant to report annual sludge production volume. Paragraph (ii) of proposed § 122.21(q)(11) would require that the applicant provide the name or identifying number, address, telephone number, and amount of sewage sludge fired in each sewage sludge incinerator that the applicant does not own or operate. This paragraph would clarify existing requirements at § 501.15(a)(2)(viii). EPA believes that this information is necessary in order to ensure that the permit is issued to the correct party.

Paragraph (iii) of proposed § 122.21(q)(11) would request detailed information on each sewage sludge incinerator that the applicant owns or operates. Paragraph (B) of proposed paragraph (iii) would request the total amount of sewage sludge fired annually in each incinerator. This information is

necessary because the monitoring requirements for sewage sludge incinerators are based on the total amount fired.

Paragraphs (C) and (D) of proposed § 122.21(q)(11)(iii) would request information on compliance with the beryllium and mercury National Emissions Standards for Hazardous Air Pollutants (NESHAPs). Section 503.43 paragraphs (a) and (b) require compliance with these standards through a cross-reference to 40 CFR Part 61 subparts C and E. If the incinerator is required to perform stack testing, these paragraphs would require the applicant to submit a report of that testing.

Under § 503.43, the pollutant limits applicable to each sewage sludge incinerator are calculated based on factors unique to each incinerator. Paragraphs (E), (F), and (G) of proposed § 122.21(q)(11)(iii) would require each applicant to submit these factors for their incinerator(s). Calculating pollutant limits on an individual basis allows the actual performance of each incinerator and actual site conditions, such as topography, to be taken into account. EPA believes that this is more appropriate than mandating national pollutant limitations for sewage sludge incinerators.

In the development of Part 503, EPA determined that it would be infeasible to establish individual limits for each hydrocarbon in sewage sludge incinerator exit gas. Instead, the Agency adopted a 100 ppm total hydrocarbon (THC) limit and required continuous THC monitoring to show compliance. Part 503 was amended, on February 25, 1994 (59 FR 9095), to allow sewage sludge incinerators whose exit gas does not exceed 100 ppm carbon monoxide (CO) to show compliance with the THC operational standard by monitoring CO instead of THC. Paragraphs (H), (I), and (J) of proposed § 122.21(q)(11)(iii) would request the incinerator information necessary to establish the correct hydrocarbon monitoring requirements.

Many of the incinerator's site-specific factors that are used to calculate pollutant limits and compliance with the operational standard are highly dependent on the temperature at which the incinerator is operated and the rate at which sewage sludge is fed into the incinerator. For most incinerators, these parameters are determined during an initial performance test. In order to appropriately calculate pollutant limits and ensure appropriate pollutant limits and that the incinerator is operated within the parameters of the original performance test, EPA needs to know the information in paragraphs (K)

through (O) of proposed § 122.21(q)(11)(iii).

Paragraphs (P) and (Q) of proposed § 122.21(q)(11)(iii) would request information on the monitoring equipment and air pollution control devices installed on the incinerator. Information on this equipment is necessary to ensure that the facility complies with the management practices at § 503.45.

12. Disposal in a Municipal Solid Waste Landfill

Proposed § 122.21(q)(12) would request information on sewage sludge that is sent to a municipal solid waste landfill (MSWLF). Section 503.4 states that sewage sludge sent to a MSWLF that complies with the requirements in 40 CFR Part 258 constitutes compliance with sec. 405(d) of the CWA. The questions in § 122.21(q)(12) are necessary to ensure the availability of accurate information about a MSWLF and the sewage sludge that is sent there.

Paragraphs (i) and (ii) of proposed § 122.21(q)(12) would clarify existing requirements at § 501.15(a)(2)(v), (viii), and (x) that request information on other permits, the location of disposal sites, and the annual sludge production volume. Paragraph (iii) would request information on the sewage sludge quality to ensure that it is acceptable for a MSWLF. Paragraph (iv) would request available information on whether the MSWLF is in compliance with Part 258.

13. Contractors

Proposed § 122.21(q)(13) would require the applicant to provide contractor information. The applicant would be required to identify all contractors responsible for any operation or maintenance aspects of the TWTDS, and specify their responsibilities. The permitting authority uses this information to determine who has primary responsibility for the operation and maintenance of the TWTDS.

14. Other Information

Proposed § 122.21(q)(14) would require the applicant to report any information necessary to determine the appropriate standards for permitting under 40 CFR Part 503, and any other information the permitting authority may request and reasonably require to assess the sewage sludge use and disposal practices, to determine whether to issue a permit, or to identify appropriate permit requirements. This paragraph restates the existing requirements in § 501.15(a)(2)(xi) and (xii).

15. Signature

Proposed § 122.21(q)(15) would require that a certifying official sign the form in compliance with 40 CFR 122.22. This would ensure that the person signing the form has the authority to speak for and legally bind the permittee.

IV. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 0226.13) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., S.W. (Mail code 2136); Washington, DC 20460; or by calling (202) 260-2740.

This collection of information has an estimated reporting burden averaging 10.7 hours per response, including annual recordkeeping burden. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., S.W. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

V. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it may adversely affect local governments by incrementally increasing permit application costs. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

VI. Executive Order 12875

Under Executive Order 12875 (58 FR 58093 (October 28, 1993)), no executive agency shall promulgate any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless:

(a) Funds to pay the direct costs associated with the regulation are provided by the Federal Government, or

(b) The agency, prior to promulgation, provides OMB a description of its consultation with representatives of the affected governments, the nature of their concerns, any written communications submitted to the agency by them, and the agency's position supporting the need for the regulation. Each agency is also required to develop an effective process to permit elected officials and other representatives of these governments an opportunity to provide meaningful and timely input on significant unfunded mandates.

As discussed above ("Public Consultation in the Development of Today's Proposal," at I.H.), the Agency consulted with States, local governments, and other parties in the development of this proposed rule. This is further discussed in the discussion below ("Unfunded Mandates Reform Act of 1995 and Consultation with State, Local, and Tribal Governments," at VII).

VII. Unfunded Mandates Reform Act of 1995 and Consultation With State, Local, and Tribal Governments

Title II of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the Unfunded Mandates Act, EPA generally must prepare a written statement, including a cost-benefit analysis, for

rules with Federal mandates that may result in expenditures to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the Unfunded Mandates Act generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Under section 203 of the Unfunded Mandates Act, EPA must develop a small government agency plan before it establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in expenditures of \$100 million or more to either State, local and tribal governments in the aggregate, or to the private sector in any year. To the extent enforceable duties arise as a result of today's proposed rule on State, local and tribal governments, such enforceable duties do not result in a significant regulatory action being imposed upon State, local and tribal governments since the estimated aggregate cost of compliance for them is not expected to exceed \$5.7 million annually. Thus, today's proposed rule is not subject to the written statement requirement in section 202 of the Act.

In compliance with E.O. 12875, which requires the involvement of State, local and tribal governments in the development of certain Federal regulatory actions, EPA conducted a wide outreach effort and actively sought the input of representatives of State, local, and tribal governments in the process of developing the proposed rule. Agency personnel have communicated with State and local representatives in

a number of different forums. For example, EPA staff involved in development of today's proposed rule invited comments on earlier drafts of the proposed rulemaking, forms, and instructions from States and local governments both directly and through organizations such as the Association of Metropolitan Sewerage Agencies (AMSA), the Water Environment Federation (WEF), and the California Association of Sanitation Agencies (CASA). In response to these efforts, the Agency was able to communicate directly, including through meetings and telephone communications, with representatives of a number of interested State and local representatives, including representatives of more than twenty-five local governments. Cities represented in a telephone conference arranged through WEF included Price (UT), Owosso (MI), Saginaw (MI), Rockwood (MI), Grand Rapids (MI), Roseburg (OR), Central Marin San. Dist. (CA), Little Rock (AR), Dallas (TX), Northeast Ohio Regional Sewer Dist. (OH). Cities represented in a meeting with AMSA representatives included Detroit (MI), Boise (ID), City of Los Angeles (CA), Phoenix (AZ), Passaic Valley (NJ); Middleton (NJ), Hampton Roads (VA), Orange County (CA), Anchorage (AK), and Alexandria (VA). Other discussions were held individually with representatives of local governments. The Agency received written comments from AMSA, several cities, and a number of States. In the comments received from States, a number of issues were raised concerning possible impacts on local governments. EPA invited, but did not receive, written comments from the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and the National League of Cities.

Once the proposed rule is finalized, the Agency intends to provide information through a variety of sources, and to educate and advise local governments concerning compliance with the proposed requirements. In the Communication Plan prepared for this proposal, the Agency has outlined which organizations EPA will contact directly concerning the proposal. The same parties will also be contacted directly regarding the final rulemaking. The communication plan is available in the record supporting this proposal. The Agency seeks to assist, educate, and advise applicants on how to comply with the permit application requirements primarily through the instructions to the proposed forms, and seeks comment as to how the

instructions could be improved. Additionally, the Agency intends to provide training for permit writers, so that they can assist, educate, and advise applicants on an as-needed basis when completing their applications.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires Federal agencies to consider the effect of proposed rules on small entities. Agencies must consider alternatives to proposed rules that would minimize the economic impact on small entities so long as these alternatives are consistent with the stated objective of the statute under which such rules are developed. However, the requirements of the Regulatory Flexibility Act do not alter standards otherwise applicable to agency action. For example, section 405 of the CWA requires EPA to promulgate regulations that are adequate to protect public health or the environment against reasonably anticipated adverse effects.

In developing these proposed regulations, EPA considered the effects of the proposed regulations on small entities. The regulatory flexibility analysis (RFA) conducted for this proposed rule meets the requirements specified in the "Guidelines for Implementing the Regulatory Flexibility Act" (U.S. EPA, Office of Regulatory Management and Evaluation and Office of Policy, Planning, and Evaluation, April 1992).

Most of the applicants that would be required to complete the municipal and sludge application forms, if finalized, are small entities. For the purposes of the RFA, EPA employs the definition of small government entities that was originally advanced in a related rulemaking. See U.S. EPA, "Regulatory Impact Analysis of the Part 503 Sewage Sludge Regulation," November 25, 1992, for a complete discussion of the development of this definition. For the purposes of this rule, the term "small government entities" is considered to mean small POTWs. Small POTWs are defined as POTWs processing less than 1 million gallons per day (mgd) of wastewater. POTWs of this size generally serve a population of 10,000 people or less. This definition is consistent with the designation of major and minor POTWs under the NPDES program.

The estimate of the number of small POTWs subject to both sets of proposed application requirements is based on the number of minor POTWs. Also, for the purposes of the RFA, the Agency conservatively assumed that all "sludge-only" POTWs are small entities.

Generally, treatment facilities serving large populations (greater than 10,000) generate effluent of sufficient volume that it must be discharged to waters of the U.S., and thus require an NPDES permit. The Agency also assumed for purposes of the RFA that all privately owned treatment facilities are small entities. Overall, EPA estimates that nearly 70 percent of municipal applicants and 74 percent of sludge applicants are small entities.

EPA considered a range of regulatory options for the proposed forms. In this proposal, the Agency has developed a two-tier approach for municipal applicants and a two-tier approach for sludge applicants. Applicants are categorized according to size and whether or not they are required to have a pretreatment program. Under each regulatory option considered, less stringent standards are required for smaller facilities that are less likely to pollute and have a lower capacity to absorb large monitoring costs.

The costs of complying with the proposed application requirements would consist entirely of paperwork and testing costs associated with completing the forms and collecting the required information. Therefore, the costs for these activities estimated in the ICR for this proposed rule are used in the RFA. The five-year compliance cost estimates for POTWs applying for NPDES permits (i.e., for both sets of application requirements) range from \$681 to \$3,627 for small POTWs under the four regulatory options under consideration for the municipal permit application and the three regulatory options under consideration for the sludge application requirements. The five-year compliance cost estimates for the various options under this proposed rule range from approximately \$507 to \$2,849 for small privately owned treatment works. These costs would represent between 0.06 and 0.31 percent of the average annual revenues of small POTWs and small privately owned treatment works. As a percent of average household expenditures on sewage treatment, these figures would range between 0.10 and 0.54 percent for small POTWs and small privately owned treatment works. The five-year compliance costs for sludge-only facilities (i.e., paperwork costs associated with the proposed sludge application requirements) range from \$375 to \$2,809 under the three regulatory options under consideration for small POTWs and from \$299 to \$2,849 for privately owned treatment works. These costs would represent well below 0.5 percent of both the average annual revenues for small treatment works (public and private) and of the

average annual household costs for sewage treatment. Thus, impacts on small treatment facilities and their customers are not expected to be severe.

List of Subjects

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control.

40 CFR Part 123

Confidential business information, Hazardous materials, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Penalties.

40 CFR Part 403

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 501

Confidential business information, Environmental protection, Reporting and recordkeeping requirements, Publicly owned treatment works, Sewage disposal, Waste treatment and disposal.

Dated: November 2, 1995.

Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR Chapter I as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

* * * * *

1. The authority citation for part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.2 is amended by revising the definition for "Publicly owned treatment works ("POTW")" and adding a definition for "TWTDS" in alphabetical order to read as follows:

§ 122.2 Definitions.

* * * * *

Publicly owned treatment works ("POTW") means a treatment works as defined by section 212 of the CWA, which is owned by a "State" or "municipality" (as defined by section 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling and

reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant, as defined in § 403.3(p) of this chapter. The term also means the municipality as defined in section 502(4) of the CWA, which has jurisdiction over the Indirect Discharges, as defined in § 403.3(g) of this chapter, to and the discharges from such a treatment works.

* * * * *

TWTDS means treatment works treating domestic sewage.

* * * * *

3–6. Section 122.21 is amended by revising paragraph (c)(2)(i) through (iii) introductory text, paragraph (d)(3), the introductory text of paragraph (f), paragraph (j) and by adding paragraph (q) before the notes to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(c) * * *

(2) *Permits under section 405(f) of CWA.* (i) Any existing treatment works treating domestic sewage (TWTDS) required to have site-specific pollutant limits, or requesting such limits, as provided in 40 CFR Part 503, must submit the permit application information required by paragraph (d)(3)(iii) of this section within 180 days after publication of a standard applicable to its sewage sludge use or disposal practice(s). After this 180-day period, TWTDS may only apply for site-specific pollutant limits for good cause and such requests must be made within 180 days of becoming aware that good cause exists.

(ii) Any TWTDS with a currently effective NPDES permit, not addressed under paragraph (c)(2)(i) of this section, must submit the application information required by paragraph (d)(3)(iii) of this section at the time of its next NPDES permit renewal application. Such information must be submitted in accordance with paragraph (d) of this section.

(iii) Any other existing TWTDS not addressed under paragraphs (c)(2)(i) or (ii) of this section must submit the information listed in paragraphs (c)(2)(iii)(A) through (E) of this section, to the Director within 1 year after publication of a standard applicable to its sewage sludge use or disposal practice(s), using Form 2S or another form approved by the Director. The Director shall determine when such TWTDS must apply for a permit.

* * * * *

(d) * * *

(3)(i) All applicants for EPA-issued permits, other than POTWs, new sources, and TWTDS, must complete Forms 1 and either 2B, 2C, or 2E of the consolidated permit application forms to apply under § 122.21 and paragraphs (f), (g), (h), and (i) of this section.

(ii) All POTWs must submit the application information required by paragraph (j) of this section, within the time periods established in paragraph (c)(2) of this section, using Form 2A or another form approved by the Director. All POTWs applying for EPA-issued permits must complete Form 2A.

(iii) All TWTDS, except "sludge-only facilities" subject to paragraph (c)(2)(iii) of this section, must submit the application information required by paragraph (q) of this section, within the time periods established in paragraph (c)(2) of this section, using Form 2S or another form approved by the Director. All such applicants applying for EPA-issued permits must complete Form 2S.

* * * * *

(f) *Information requirements.* All applicants for NPDES permits, other than POTWs and other TWTDS, shall provide the following information to the Director, using the application form provided by the Director (additional information required of applicants is set forth in paragraphs (g) through (k) of this section).

* * * * *

(j) *Application requirements for new and existing POTWs.* Unless otherwise indicated, all POTWs shall provide, at a minimum, the information in this paragraph (j) to the Director, using Form 2A or another application form provided by the Director. The Director may waive any requirement of this paragraph if the Director has access to substantially identical information.

(1) *Basic application information.* All applicants shall provide the following information:

(i) *Facility information.* Name, mailing address, and location of the facility for which the application is submitted;

(ii) *Applicant information.* Name, mailing address, and telephone number of the applicant, and indication as to whether the applicant is the facility's owner, operator, or both;

(iii) *Existing environmental permits.* Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

(A) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), subpart C of this part;

(B) UIC program under the Safe Drinking Water Act (SDWA);

(C) NPDES program under Clean Water Act (CWA);

(D) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(E) Nonattainment program under the Clean Air Act;

(F) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(G) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(H) Dredge or fill permits under section 404 of the CWA; and

(I) Other relevant environmental permits, including State permits;

(iv) *Population*. The name and population of each municipal entity served by the facility, including unincorporated connector districts;

(v) *Flow rate*. The facility's design flow rate and annual average daily flow rate for each of the previous 3 years;

(vi) *Collection system*. Identify type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises;

(vii) *Inflow and infiltration*. The current average daily flow rate volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

(viii) *Topographic map*. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

(A) Treatment plant area and unit processes;

(B) The pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

(C) Each well where fluids from the treatment plant are injected underground;

(D) Wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within the map area;

(E) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites) within the property boundaries; and

(F) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

(ix) *Process flow diagram or schematic*.

(A) A diagram showing the processes of the treatment plant, including all bypass piping. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and

(B) A narrative description of the diagram;

(x) *Bypasses*. The following information for each outfall that is a discharge from a bypass point:

(A) The actual or approximate number of wet-weather and dry-weather bypass incidents in the twelve months prior to the date of the permit application;

(B) The actual or approximate duration of each wet-weather or dry-weather bypass incident;

(C) The actual or approximate volume, in millions of gallons, of each wet-weather or dry-weather bypass incident; and

(D) The reason(s) why such bypasses occurred;

(xi) *Outfalls and other discharge or disposal methods*. The following information for outfalls to waters of the United States and other discharge or disposal methods:

(A) For effluent discharges to waters of the United States, the total number and types of outfalls (e.g. treated effluent, CSOs) to surface water;

(B) For wastewater discharged to surface impoundments:

(1) The location of each surface impoundment;

(2) The annual average daily volume discharged to each surface impoundment; and

(3) Whether the discharge is continuous or intermittent;

(C) For wastewater applied to the land:

(1) The location of each land application site;

(2) The size of each land application site, in acres;

(3) The annual average daily volume applied to each land application site, in gallons per day; and

(4) Whether land application is continuous or intermittent;

(D) For wastewater discharged to another facility:

(1) The means by which the discharge is transported;

(2) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(3) The name, mailing address, contact person, phone number, and NPDES permit number (if any) of the receiving facility; and

(4) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(E) For wastewater disposed of in a manner not included in paragraphs (j)(1)(ix) (A) through (D) of this section (e.g., underground percolation, underground injection):

(1) A description of the disposal method, including the location and size of each disposal site, if applicable;

(2) The annual average daily volume disposed of by this method, in gallons per day; and

(3) Whether disposal through this method is continuous or intermittent;

(xii) *Federal Indian reservations*.

Information concerning whether the facility is located on a Federal Indian Reservation or whether the facility discharges to a receiving stream that flows through a Federal Indian Reservation; and

(xiii) *Scheduled improvements, schedules of implementation*. The following information regarding scheduled improvements:

(A) The outfall number of each outfall affected;

(B) A narrative description of each required improvement;

(C) Scheduled or actual dates of completion for the following:

(1) Commencement of construction;

(2) Completion of construction;

(3) Commencement of discharge; and

(4) Attainment of operational level;

and

(D) A description of permits and clearances concerning other Federal and/or State requirements;

(2) *Information on effluent discharges*.

Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

(i) *Description of outfall*. The following information about each outfall:

(A) Outfall number;

(B) State, county, and city or town in which outfall is located;

(C) Latitude and longitude, to the nearest second;

(D) Distance from shore and depth below surface;

(E) Average daily flow rate, in million gallons per day;

(F) The following information for each outfall with a seasonal or periodic discharge:

(1) Number of times per year the discharge occurs;

(2) Duration of each discharge;

(3) Flow of each discharge; and

(4) Months in which discharge occurs; and

(G) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used;

(ii) *Description of receiving waters.* The following information (if known) for each outfall through which effluent is discharged to waters of the United States:

(A) Type (e.g., stream, river, lake, estuary, ocean) and name of receiving water;

(B) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;

(C) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and

(D) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable); and

(iii) *Description of treatment.* The following information describing the treatment provided for discharges from each outfall to waters of the United States:

(A) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(1) Design biochemical oxygen demand (BOD₅ or CBOD₅) removal (percent);

(2) Design suspended solids (SS) removal (percent); and, where applicable;

(3) Design phosphorus (P) removal (percent);

(4) Design nitrogen (N) removal (percent); and

(5) Any other removals that an advanced treatment system is designed to achieve.

(B) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination);

(3) *Effluent monitoring for specific parameters.* (i) As provided in paragraphs (j)(3) (ii) through (x) of this section all applicants shall submit to the Director effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the United States, except for CSOs. The Director may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent;

(ii) All applicants must sample and analyze for the pollutants listed in Appendix J of this part, Table 1;

(iii) The following applicants must sample and analyze for the pollutants listed in Appendix J of this part, Table 2, and for any other pollutants for which the State or EPA have established water

quality standards applicable to the receiving waters:

(A) All POTWs with a design influent flow rate equal to or greater than one million gallons per day;

(B) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program; and

(C) Other POTWs, as required by the Director;

(iv) Unless otherwise required by the Director, applicants are not required to sample for the pollutants listed in Appendix J of this part, Table 3;

(v) The Director should require sampling for additional pollutants, as appropriate, on a case-by-case basis;

(vi) Applicants must provide data from a minimum of three samples taken within three years prior to the date of the permit application. Samples must be representative of the discharge from each outfall, and at least two samples should be at least four months, but no more than eight months apart. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The Director should require additional samples, as appropriate, on a case-by-case basis;

(vii) All existing data for pollutants specified in paragraphs (j)(3) (ii) through (v) of this section that is collected within three years of the application must be included with the pollutant data submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to provide all data collected within one year of the application;

(viii) Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR part 136 unless an alternative is specified in the existing NPDES permit. When no analytical method is approved, applicants may use any suitable method and must provide a description of the method. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, *E. coli*, and enterococci. For all other pollutants, 24-hour flow-weighted composite samples must be used. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. A single grab sample may be taken for effluent from holding ponds or other impoundments, so long as they have a retention time of greater than 24 hours;

(ix) The effluent monitoring data provided must include at least the following information for each parameter:

(A) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(B) Average daily discharge for all samples, expressed as concentration or mass, based upon actual sample values, and the number of samples used to obtain this value;

(C) The analytical method used; and

(D) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used; and

(x) Unless otherwise required by the Director, metals must be reported as total recoverable;

(4) *Effluent monitoring for whole effluent toxicity.* (i) All applicants shall provide an identification of any biological toxicity tests that the applicant knows or has reason to believe have been made during the three years prior to the date of the application on any of the applicant's discharges or on a receiving water in relation to a discharge.

(ii) As provided in paragraphs (j)(4) (iii) through (ix) of this section, the following applicants shall submit to the Director the results of valid whole effluent biological toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(A) All POTWs with design influent flow rate equal to or greater than one million gallons per day;

(B) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program; and

(C) Other POTWs, as required by the Director, based on consideration of the following factors:

(1) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(2) The ratio of effluent flow to receiving stream flow;

(3) Existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(4) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, one of the Great Lakes, or a water designated as an outstanding natural resource water; or

(5) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the Director determines

could cause or contribute to adverse water quality impacts.

(iii) Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the Director may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis.

(iv) Each applicant required to perform whole effluent biological toxicity testing pursuant to paragraph (j)(4)(ii) of this section shall provide the results of a minimum of four quarterly tests for a year. Applicants shall conduct tests with multiple species (no less than two species; e.g., fish, invertebrate, plant), and test for acute or chronic toxicity, depending on the range of receiving water dilution. It is recommended that applicants conduct acute or chronic testing based on the following dilutions:

(A) Acute toxicity testing if the dilution of the effluent is greater than 1000:1 at the edge of the mixing zone;

(B) Acute or chronic toxicity testing if the dilution of the effluent is between 100:1 and 1000:1 at the edge of the mixing zone. Acute testing may be more appropriate at the higher end of this range (1000:1), and chronic testing may be more appropriate at the lower end of this range (100:1); and

(C) Chronic testing if the dilution of the effluent is less than 100:1 at the edge of the mixing zone.

(v) Each applicant required to perform whole effluent biological toxicity testing pursuant to paragraph (j)(4)(ii) of this section shall provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

(vi) Provide the results using the form provided by the Director, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to paragraph (j)(4)(ii) of this section for which such information has not been reported previously to the Director.

(vii) Whole effluent toxicity testing conducted pursuant to paragraph (j)(4)(ii) of this section shall be conducted using methods approved under 40 CFR part 136.

(viii) For biomonitoring data submitted to the Director within three years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

(ix) Each POTW required to perform whole effluent biological testing pursuant to paragraph (j)(4)(ii) of this section must provide any information on the cause of toxicity and written details of any toxicity reduction

evaluation conducted, if any whole effluent toxicity test conducted within the past three years revealed toxicity.

(5) *Industrial discharges and pretreatment.* Applicants must submit the information in paragraphs (j)(5)(i) through (iii) of this section, as applicable, regarding industrial user discharges to the POTW.

(i) *General information.* General information on industrial users.

(A) Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW;

(B) Total average daily flow rate from all industrial (non-domestic) users, from SIUs, and from all CIUs discharging to the POTW; and

(C) Estimated percent of total influent contributed by all industrial (non-domestic) users, by SIUs only, by CIUs only, and by domestic sources discharging to the POTW.

(ii) *Pretreatment program and local limits.* POTWs with an approved pretreatment program under 40 CFR part 403 shall provide information concerning pretreatment program modifications that are required to be submitted but have not been approved in accordance with 40 CFR 403.18.

(iii) *Significant industrial users.* POTWs with one or more significant industrial users (SIUs) shall provide the following information for each SIU, as defined at 40 CFR 403.3(t), that discharges to the POTW:

(A) Name and mailing address;

(B) Description of all industrial processes that affect or contribute to the SIU's discharge;

(C) Principal products and raw materials of the SIU;

(D) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and non-process flow;

(E) Whether the SIU is subject to local limits;

(F) Whether the SIU is subject to categorical standards, and if so, under which category(ies) and subcategory(ies); and

(G) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past three years;

(6) *Discharges from hazardous waste generators and from waste cleanup or remediation sites.* POTWs receiving RCRA, CERCLA, or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

(i) *RCRA hazardous waste.* If the POTW receives by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes

pursuant to 40 CFR part 261, or authorized State, or if it is expected to receive such wastes during the life of the permit, the applicant must report the following:

(A) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and

(B) The hazardous waste number and amount received annually of each hazardous waste;

(ii) *CERCLA wastewaters.* If the POTW receives wastewaters that originate from response activities undertaken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or if it is expected to receive such wastewaters during the life of the permit, the applicant must report the following:

(A) The identity and description of the site(s) at which the wastewater originates or is expected to originate;

(B) The identities of the hazardous constituents in the wastewater; and

(C) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW;

(iii) *RCRA corrective action wastewaters.* If the POTW receives wastewaters that originate from remedial activities undertaken pursuant to sections 3004(u) or 3008(h) of RCRA, or authorized State, or if it is expected to receive such wastewaters during the life of the permit, the applicant must report the following:

(A) The identity and description of the facility(ies) at which the wastewater originates or is expected to originate;

(B) The identities of the hazardous constituents in the wastewater; and

(C) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW; and

(iv) *Wastewaters from other remedial activities.* If the POTW receives wastewaters that originate from remedial activities other than those in paragraphs (j)(6) (ii) and (iii) of this section, the applicant shall provide a written description that includes the following information:

(A) The identity and description of the facility(ies) at which the wastewater originates or is expected to originate;

(B) The identities of the hazardous constituents in the wastewater; and

(C) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW;

(7) *Combined sewer overflows.* Each applicant with combined sewer systems shall provide the following information:

(i) *Combined sewer system information.* The following information regarding the combined sewer system:

(A) *CSO discharge points.* The number of combined sewer overflow

(CSO) discharge points in the combined sewer system to be covered by the application;

(B) *System map.* A map indicating the location of the following:

- (1) All CSO discharge points;
- (2) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding natural resource waters); and
- (3) Waters supporting threatened and endangered species potentially affected by CSOs;

(C) *System diagram.* A diagram of the combined sewer collection system that includes the following information:

- (1) The location of major sewer trunk lines, both combined and separate sanitary;
- (2) The locations of points where separate sanitary sewers feed into the combined sewer system;
- (3) In-line and off-line storage structures;
- (4) The locations of flow-regulating devices; and
- (5) The locations of pump stations; and

(D) *System evaluation.* A list of studies, including modeling studies, hydraulic studies, past monitoring efforts, and facility plans, that have been performed on the collection system since the last permit application; and

(i) *Information on CSO outfalls.* The following information for each CSO discharge point covered by the permit application:

- (A) *Description of outfall.* The following information on each outfall:
- (1) Outfall number;
 - (2) State, county, and city or town in which outfall is located;
 - (3) Latitude and longitude, to the nearest second; and
 - (4) Distance from shore and depth below surface;

(B) *Monitoring.* Indicate if any of the following were monitored in the past year for this CSO and provide the results of this monitoring:

- (1) Rainfall;
 - (2) CSO flow volume;
 - (3) CSO water quality;
 - (4) Receiving water quality; and
 - (5) The number of storm events;
- (C) *CSO incidents.* The following information about CSO incidents:
- (1) The number of incidents in the past year;
 - (2) The average duration per incident;
 - (3) The average volume per CSO incident; and
 - (4) The minimum rainfall that caused a CSO incident in the last year;

(D) *Description of receiving waters.* The following information about receiving waters:

(1) Name and type of receiving water (e.g., stream/river, lake/pond, estuary, ocean);

(2) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code (if known); and

(3) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code (if known); and

(E) *CSO operations.* The following information concerning CSO operations:

(1) Whether the CSO includes contributions from significant industrial users; and

(2) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable State water quality standard);

(8) *Contractors.* All applicants shall provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility; and

(9) *Signature.* All applications shall be signed by a certifying official in compliance with § 122.22.

* * * * *

(q) *Sewage sludge management.* All treatment works treating domestic sewage, except "sludge-only facilities" subject to paragraph (c)(2)(iii) of this section, shall provide the information in this paragraph to the Director, using Form 2S or another form approved by the Director. The Director may waive any requirement of this paragraph if the Director has access to substantially identical information.

(1) *Facility information.* All applicants shall submit the following information:

(i) The name, mailing address, and location of the treatment works treating domestic sewage for which the application is submitted;

(ii) The facility's latitude and longitude to the nearest second, and method of determination;

(iii) Whether the facility is a Class I Sludge Management Facility;

(iv) The design influent flow rate (in million gallons per day); and

(v) The total population served;

(2) *Applicant information.* All applicants shall submit the following information:

(i) The name, mailing address, and telephone number of the applicant;

(ii) Indication whether the applicant is the owner, operator, or both; and

(iii) The applicant's status as Federal, State, private, public, or other entity;

(3) *Permit information.* All applicants shall submit the facility's NPDES permit number, if applicable, and a listing of all other Federal, State, and local permits or construction approvals received or applied for under any of the following programs:

(i) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);

(ii) UIC program under the Safe Drinking Water Act (SDWA);

(iii) NPDES program under the Clean Water Act (CWA);

(iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(v) Nonattainment program under the Clean Air Act;

(vi) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(vii) Dredge or fill permits under section 404 of CWA; and

(viii) Other relevant environmental permits, including State or local permits;

(4) *Federal Indian Reservations.* All applicants shall identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs on Federal Indian Reservations;

(5) *Topographic map.* All applicants shall submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:

(i) All sewage sludge management facilities, including use and disposal sites;

(ii) All water bodies; and

(iii) Wells used for drinking water listed in public records or otherwise known to the applicant within 1/4 mile of the facility property boundaries;

(6) *Sewage sludge handling.* All applicants shall submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each such unit, and all processes used for pathogen reduction and vector attraction reduction;

(7) *Sewage sludge quality.* (i) If the applicant is a "Class I sludge management facility," the applicant shall submit the results of a toxicity characteristic leaching procedure (TCLP), as described in 40 CFR part 261, conducted in the last five years to determine whether the sewage sludge is a hazardous waste.

(ii) The applicant shall submit sewage sludge monitoring data for the

parameters indicated in paragraphs (q)(7)(ii) (A) through (B) of this section. Monitoring data shall be two years old or less. The data for each parameter shall include the concentration in sewage sludge (mg/kg dry weight), the sample date(s), the analytical method, and the minimum detection level for the analysis.

(A) "Class I Sludge Management Facilities," as defined in § 122.2, shall submit sewage sludge monitoring data for TKN, ammonia, nitrate, total phosphorus, the pollutants in Appendix J of this part, Tables 2 and 3, and any other parameters for which limits in sewage sludge have been established in 40 CFR part 503 on the date of permit application.

(B) All other facilities required to apply under this section shall submit sewage sludge monitoring data for TKN, ammonia, nitrate, total phosphorus and those pollutants for which limits in sewage sludge have been established in 40 CFR part 503 on the date of permit application;

(8) *Preparation of sewage sludge.* If the applicant is a "person who prepares" sewage sludge, as defined at 40 CFR 503.9(r), the applicant shall provide the following information:

(i) If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility;

(ii) If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:

(A) The name, mailing address, and location of the other facility;

(B) The total dry metric tons per 365-day period received from the other facility; and

(C) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics;

(iii) If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:

(A) Whether the Class A pathogen reduction requirements in 40 CFR 503.32(a) or the Class B pathogen reduction requirements in 40 CFR 503.32(b) are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(B) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(1) through (b)(8) are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(C) A description of any other blending, treatment, or other activities

that change the quality of sewage sludge;

(iv) If sewage sludge from the applicant's facility meets the ceiling concentrations in 40 CFR 503.13(b)(1), the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(8), and if the sewage sludge is applied to the land, the applicant shall provide the total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is applied to the land;

(v) If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to paragraph (q)(8)(iv) of this section, the applicant shall provide the following information:

(A) The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is sold or given away in a bag or other container for application to the land; and

(B) A copy of all labels or notices that accompany the sewage sludge being sold or given away;

(vi) If sewage sludge from the applicant's facility is provided to another "person who prepares," as defined at 40 CFR 503.9(r), and the sewage sludge is not subject to paragraph (q)(8)(iv) of this section, the applicant shall provide the following information for each facility receiving the sewage sludge:

(A) The name and mailing address of the receiving facility;

(B) The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that the applicant provides to the receiving facility;

(C) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(D) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 40 CFR 503.12(g); and

(E) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge;

(9) *Land application of bulk sewage sludge.* If sewage sludge from the applicant's facility is applied to the land in bulk form, and is not subject to § 122.21(q)(8)(iv), (v), or (vi), the applicant shall provide the following information:

(i) The total dry metric tons per 365-day period of sewage sludge subject to

this paragraph (q)(9) that is applied to the land;

(ii) If any land application sites are located in States other than the State where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the State(s) where the land application sites are located;

(iii) The following information for each land application site that has been identified at the time of permit application:

(A) The name (if any), and location for the land application site;

(B) The name, mailing address, and telephone number of the site owner, if different from the applicant;

(C) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

(D) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under 40 CFR 503.11;

(E) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

(F) Whether either of the vector attraction reduction options of 40 CFR 503.33(b)(9) or (b)(10) is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

(G) Any available ground-water monitoring data, with a description of the well locations and approximate depth to ground water, for the land application site;

(iv) The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site:

(A) Whether the applicant has contacted the permitting authority in the State where the bulk sewage sludge subject to 40 CFR 503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to 40 CFR 503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;

(B) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site since July 20, 1993, if, based on the inquiry in paragraph (q)(9)(iv)(A) of this section, bulk sewage sludge subject to cumulative pollutant loading rates in

40 CFR 503.13(b)(2) has been applied to the site since July 20, 1993;

(v) If not all land application sites have been identified at the time of permit application, the applicant shall submit a land application plan that, at a minimum:

(A) Describes the geographical area covered by the plan;

(B) Identifies the site selection criteria;

(C) Describes how the site(s) will be managed;

(D) Provides for advance notice to the permit authority of specific land application sites and reasonable time for the permit authority to object prior to land application of the sewage sludge; and

(E) Provides for advance public notice as required by State and local law, but in all cases requires notice to landowners and occupants adjacent to or abutting the proposed land application site;

(10) *Surface disposal.* If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant shall provide the following information:

(i) The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period;

(ii) The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does *not* own or operate:

(A) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and

(B) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site; and

(iii) The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(A) The name or number and the location of the active sewage sludge unit;

(B) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(C) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(D) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;

(E) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any Federal, State, and local permit number(s) for leachate disposal;

(F) If the active sewage sludge unit is less than 150 meters from the property

line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(G) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(H) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(I) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(1) The name, contact person, and mailing address of the facility; and

(2) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(J) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(9) through (b)(11) is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(K) The following information, as applicable to any ground-water monitoring occurring at the active sewage sludge unit:

(1) A description of any ground-water monitoring occurring at the active sewage sludge unit;

(2) Any available ground-water monitoring data, with a description of the well locations and approximate depth to ground water;

(3) A copy of any ground-water monitoring plan that has been prepared for the active sewage sludge unit; and

(4) A copy of any certification that has been obtained from a qualified ground-water scientist that the aquifer has not been contaminated; and

(L) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request;

(11) *Incineration.* If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant shall provide the following information:

(i) The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period;

(ii) The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does *not* own or operate:

(A) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

(B) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator;

(iii) The following information for each sewage sludge incinerator that the applicant owns or operates:

(A) The name and/or number and the location of the sewage sludge incinerator;

(B) The total dry metric tons per 365-day period fired in the sewage sludge incinerator;

(C) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Beryllium in 40 CFR part 61 will be achieved;

(D) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Mercury in 40 CFR part 61 will be achieved;

(E) The dispersion factor for the sewage sludge incinerator, as well as modeling results and supporting documentation;

(F) The control efficiency for parameters regulated in 40 CFR 503.43, as well as performance test results and supporting documentation;

(G) Information used to calculate the risk specific concentration (RSC) for chromium, including the results of incinerator stack tests for hexavalent and total chromium concentrations, if the applicant is requesting a chromium limit based on a site-specific RSC value;

(H) The concentration (ppm) of total hydrocarbons (THC) or Carbon Monoxide (CO) in the exit gas for the sewage sludge incinerator, as well as supporting documentation, both before and after correction for zero percent moisture and correction to seven percent oxygen as required in 40 CFR 503.44;

(I) The oxygen concentration in the sewage sludge incinerator stack exit gas;

(J) Information used to determine the moisture content of the sewage sludge incinerator stack exit gas;

(K) The type of sewage sludge incinerator;

(L) The combustion temperature, as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies;

(M) The following information on sewage sludge feed rate:

(1) Sewage sludge feed rate in dry metric tons per day;

(2) Identification of whether the feed rate submitted is average use or maximum design; and

(3) A description of how the feed rate was calculated;

(N) The incinerator stack height in meters for each stack, including identification of whether actual or creditable stack height was used;

(O) The operating parameters for the sewage sludge incinerator air pollution control device(s), as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies;

(P) Identification of the monitoring equipment in place, including (but not limited to) equipment to monitor the following:

(1) Total hydrocarbons or Carbon Monoxide;

(2) Percent oxygen;

(3) Percent moisture; and

(4) Combustion temperature; and

(Q) A list of all air pollution control equipment used with this sewage sludge incinerator;

(12) *Disposal in a municipal solid waste landfill.* If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant shall provide the following information for each MSWLF to which sewage sludge is sent:

(i) The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;

(ii) The total dry metric tons per 365-day period sent from this facility to the MSWLF;

(iii) A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

(iv) Information, if known, indicating whether the MSWLF complies with criteria set forth in 40 CFR Part 258;

(13) *Contractors.* All applicants shall provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility;

(14) *Other information.* At the request of the permitting authority, the applicant shall provide any other information necessary to determine the appropriate standards for permitting under 40 CFR part 503, and shall provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and

(15) *Signature.* All applications shall be signed by a certifying official in compliance with § 122.22.

7. Part 122 is amended by adding Appendix J to read as follows:

Appendix J to Part 122—NPDES Permit Testing Requirements for Publicly Owned Treatment Works (§ 122.21(j)) and Treatment Works Treating Domestic Sewage (§ 122.21(q))

Table 1—Effluent Parameters for All POTWS

Ammonia (as N)
 Biochemical oxygen demand (BOD-5 or CBOD-5)
 Chlorine (total residual, TRC)
 Dissolved oxygen
E. Coli
 Enterococci
 Fecal coliform
 Flow Rate
 Hardness (as CaCO₃)
 Kjeldahl nitrogen
 Nitrate/Nitrite
 Oil and grease
 pH
 Phosphorus
 Temperature
 Total dissolved solids
 Total suspended solids

Table 2—Effluent and Sewage Sludge Parameters for Selected POTWS and Treatment Works Treating Domestic Sewage

Metals (Total Recoverable), Cyanide and Total Phenols

Antimony 7440-36-0
 Arsenic 7440-38-2
 Beryllium 7440-41-7
 Cadmium 7440-43-9
 Chromium 7440-47-3
 Copper 7440-50-8
 Lead 7439-92-1
 Mercury 7439-97-6
 Nickel 7440-02-0
 Selenium 7782-49-2
 Silver 7440-22-4
 Thallium 7440-28-0
 Zinc 7440-66-6
 Cyanide 57-12-5
 Phenols, total

Volatile Organic Compounds

Acrolein 107-02-8
 Acrylonitrile 107-13-1
 Benzene 271-43-2
 Bromoform 75-25-2
 Carbon tetrachloride 56-23-5
 Chlorobenzene

108-90-7
 Chlorodibromomethane 124-48-1
 Chloroethane 75-00-3
 2-chloroethylvinyl ether 110-75-8
 Chloroform 67-66-3
 Dichlorobromomethane 75-27-4
 1,1-dichloroethane 75-34-3
 1,2-dichloroethane 107-06-2
 Trans-1,2-dichloroethylene 156-60-5
 1,1-dichloroethylene 75-35-4
 1,2-dichloropropane 78-87-5
 1,3-dichloropropene 542-75-6
 Ethylbenzene 100-41-4
 Methyl bromide 74-83-9
 Methyl chloride 74-87-3
 Methylene chloride 75-09-2
 1,1,2,2-tetrachloroethane 630-20-6
 Tetrachloroethylene 127-18-4
 Toluene 108-88-3
 1,1,1-trichloroethane 71-55-6
 1,1,2-trichloroethane 79-00-5
 Trichloroethylene 79-01-6
 Vinyl chloride 75-01-4

Acid-extractable compounds

P-chloro-m-cresol 59-50-7
 2-chlorophenol 95-57-8
 2,4-dichlorophenol 120-83-2
 2,2,4-dimethylphenol 105-67-9
 4,6-dinitro-o-cresol 534-52-1
 2,4-dinitrophenol 51-28-5
 2-nitrophenol 887-5-5
 4-nitrophenol 100-02-7
 Pentachlorophenol 87-86-5
 Phenol 108-295-2
 2,4,6-trichlorophenol 88-06-2

Base-Neutral Compounds

Acenaphthene 83-32-9
 Acenaphthylene 208-96-8
 Anthracene

120-12-7	621-64-7
Benzidine	N-nitrosodimethylamine
92-87-5	62-75-9
Benzo(a)anthracene	N-nitrosodiphenylamine
56-55-3	86-30-6
Benzo(a)pyrene	Phenanthrene
50-32-8	85-01-8
3,4 benzofluoranthene	Pyrene
205-99-2	129-00-0
Benzo(ghi)perylene	1,2,4-trichlorobenzene
191-24-2	120-82-1
Benzo(k)fluoranthene	Table 3—Other Effluent and Sewage
207-08-9	Sludge Parameters for Treatment
Bis (2-chloroethoxy) methane	Works Treating Domestic Sewage and
111-91-1	Selected POTWS
Bis (2-chloroethyl) ether	<i>Metals</i>
111-44-4	Molybdenum
Bis (2-chloroisopropyl) ether	7439-98-7
108-60-1	<i>Pesticides</i>
Bis (2-ethylhexyl) phthalate	Aldrin
117-81-7	309-00-2
4-bromophenyl phenyl ether	Alpha-BHC
101-55-3	319-84-6
Butyl benzyl phthalate	Beta-BHC
85-68-7	319-85-7
2-chloronaphthalene	Delta-BHC
91-58-7	319-86-8
4-chlorophenyl phenyl ether	Gamma-BHC
7005-72-3	58-89-9
Chrysene	Chlordane
218-01-9	57-74-9
Di-n-butyl phthalate	4,4'-DDD
84-74-2	72-54-8
Di-n-octyl phthalate	4,4'-DDE
117-84-0	72-55-9
Dibenzo(a,h)anthracene	4,4'-DDT
53-70-3	50-29-3
1,2-dichlorobenzene	Dieldrin
95-50-1	60-57-1
1,3-dichlorobenzene	Alpha-endosulfan
541-73-1	959-98-8
1,4-dichlorobenzene	Beta-endosulfan
106-46-7	33213-65-9
3,3'-dichlorobenzidine	Endosulfan sulfate
91-94-1	1031-07-8
Diethyl phthalate	Endrin
84-66-2	72-20-8
Dimethyl phthalate	Endrin aldehyde
131-11-3	7421-93-4
2,4-dinitrotoluene	Heptachlor
121-14-2	76-44-8
2,6-dinitrotoluene	Heptachlor epoxide
606-20-2	1024-57-3
1,2-diphenylhydrazine	PCB-1016 (Aroclor 1016)
122-66-7	12674-11-2
Fluoranthene	PCB-1221 (Aroclor 1221)
206-44-0	11104-28-2
Fluorene	PCB-1232 (Aroclor 1232)
86-73-7	11141-16-5
Hexachlorobenzene	PCB-1242 (Aroclor 1242)
118-74-1	53469-21-9
Hexachlorobutadiene	PCB-1248 (Aroclor 1248)
87-68-3	12672-29-6
Hexachlorocyclopentadiene	PCB-1254 (Aroclor 1254)
77-47-4	11097-69-1
Hexachloroethane	PCB-1260 (Aroclor 1260)
67-72-1	11096-82-5
Indeno(1,2,3-cd)pyrene	Toxaphene
193-39-5	8001-35-2
Isophorone	<i>Other</i>
78-59-1	2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)
Naphthalene	1746-01-6
91-20-3	
Nitrobenzene	
98-95-3	
N-nitrosodi n-propylamine	

PART 123—STATE PROGRAM REQUIREMENTS

8a. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

8b. Section 123.25 is amended by revising paragraph (a)(4) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(4) Sections 122.21(a), (b), (c)(2), (e) through (k), (m) through (p), and (q)—(Application for a permit);

* * * * *

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

9. The authority citation for part 403 continues to read as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977, (Pub. L. 95-217) sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92-500) as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (Pub. L. 100-4).

10. Section 403.8 is amended by revising paragraph (f)(4) to read as follows:

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

* * * * *

(f) * * *

(4) The POTW shall:

(i) Develop local limits as required in § 403.5(c)(1), or demonstrate that they are not necessary; and

(ii) Following permit issuance or reissuance, provide a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1).

* * * * *

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

11. The authority citation for part 501 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

12. Section 501.15 is amended by removing the reference “§ 501.15(a)(2)(ix)” in paragraphs (d)(4) introductory text, (d)(4)(i)(C), and (d)(5)(ii)(B) and adding in its place “§ 122.21(q)(9)(v)”, and by revising paragraph (a)(2) to read as follows:

§ 501.15 Requirements for permitting.

(a) * * *

(2) *Information requirements.* All treatment works treating domestic sewage shall submit to the Director the

information listed at 40 CFR 122.21 (q) within the time frames established in paragraph (d)(1)(ii) of this section.

* * * * *

Note: The following form will not appear in the Code of Federal Regulations.

BILLING CODE 6560-50-P

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(for official use only)

NPDES PERMIT NUMBER:

FACILITY NAME:

FORM
2A
NPDES

BASIC APPLICATION INFORMATION

APPLICATION OVERVIEW

Form 2A has been developed in a modular format and consists of a "Basic Application Information" packet and a "Supplemental Application Information" packet. All applicants must complete the Basic Application Information packet. Some applicants also must complete portions of the Supplemental Application Information packet. To obtain the Supplemental Application Information packet, contact your permitting authority. The following items explain which parts of Form 2A you must complete.

BASIC APPLICATION INFORMATION:

All applicants must complete the Basic Application Information packet.

SUPPLEMENTAL APPLICATION INFORMATION:

A. Expanded Effluent Testing Data. A treatment works that discharges effluent to surface waters of the United States and meets one or more of the following criteria must complete Part A (Expanded Effluent Testing Data) of the Supplemental Application Information packet:

1. Has a design flow rate greater than or equal to 1 mgd, or
2. Is required to have a pretreatment program (or has one in place), or
3. Is otherwise required by the permitting authority to provide the information.

B. Toxicity Testing Data. A treatment works that meets one or more of the following criteria must complete Part B (Toxicity Testing Data) of the Supplemental Application Information packet:

1. Has a design flow rate greater than or equal to 1 mgd, or
2. Is required to have a pretreatment program (or has one in place), or
3. Is otherwise required by the permitting authority to submit results of toxicity testing.

C. Industrial User Discharges, Pretreatment, and RCRA/CERCLA Wastes. A treatment works that accepts process wastewater from any significant industrial users (SIUs) or receives RCRA or CERCLA wastes must complete Part C (Industrial User Discharges, Pretreatment and RCRA/CERCLA Wastes) of the Supplemental Application Information packet. SIUs are defined as:

1. All industrial users subject to Categorical Pretreatment Standards under 40 Code of Federal Regulations (CFR) 403.6 and 40 CFR Chapter I, Subchapter N (see instructions); and
2. Any other industrial user that:
 - a. Discharges an average of 25,000 gallons per day or more of process wastewater to this treatment works (with certain exclusions); or
 - b. Contributes a process wastestream that makes up 5 percent or more of the average dry weather hydraulic or organic capacity of this treatment plant; or
 - c. Is designated as a SIU by the control authority.

Refer to the instructions for further explanation.

D. Combined Sewer Systems. A treatment works that has a combined sewer system must complete Part D (Combined Sewer Systems) of the Supplemental Application Information packet.

ALL APPLICANTS MUST COMPLETE THE CERTIFICATION ON PAGE 7.

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EPA ID NUMBER:
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NPDES PERMIT NUMBER:

FACILITY NAME:

TREATMENT WORKS:

All treatment works must complete this Basic Application Information packet

1. Facility Information.

Facility name _____

Mailing address _____

Contact person _____

Title _____

Phone number _____

Facility address (not P.O. Box) _____

2. Applicant Information. If the applicant is different from the above, provide the following

Applicant name _____

Mailing address _____

Contact person _____

Title _____

Phone number _____

Is the applicant the owner or operator (or both) of this treatment works?
 _____ owner _____ operator _____ other (describe) _____

Indicate whether correspondence regarding this permit should be directed to the facility or the applicant.
 _____ facility _____ applicant

3. Existing Environmental Permits. Provide the permit number of any existing environmental permits that have been issued to your facility (include state-issued permits).

NPDES _____ PSD _____

UIC _____ Other _____

RCRA _____ Other _____

4. Population. List the municipalities or areas served (municipalities and incorporated service areas). Also list their populations of the total population served.

Name _____ Population Served _____

Total population served _____

5. Indicate the design influent flow rate of your treatment plant (i.e., the wastewater flow rate that your plant was built to handle). Also provide the average daily flow rate and maximum daily flow rate for each of the last three years. Each year's data must be based on a 12-month time period, with the 12th month of "this year" occurring no more than three months prior to this application submittal.

a. Design maximum daily influent flow rate _____ mgd

Two Years Ago _____ Last Year _____ This Year _____

b. Annual average daily flow rate _____ mgd

c. Maximum daily flow rate _____ mgd

6. Collection System. Indicate the type(s) of collection system(s) flowing into this treatment plant. Check all that apply. Also estimate the percent contribution (by miles) of each

_____ Separate sanitary sewer

_____ Combined storm and sanitary sewer

7. Inflow and Infiltration. Estimate the average number of gallons per day that flow into the treatment works from inflow and/or infiltration.

_____ gpd

Briefly explain any steps underway or planned to minimize inflow and infiltration.

8. Topographic Map. Attach to this application a topographic map of the area extending at least one mile beyond property boundaries. This map must show the outline of the facility and the following information. (You may submit more than one map if one map does not show the entire area.)

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10. Bypass. (cont'd)

e. Does your treatment plant have backup generators to allow plant operation and treatment to continue during power outages?
Yes ___ No ___

11. Discharges and Other Disposal Methods.

a. Does your treatment works discharge effluent to waters of the U.S.? ["Waters of the U.S." are defined in the instructions.]
Yes ___ No ___

If yes, list how many of each of the following types of discharge points your treatment works uses:

Discharges of treated effluent _____

Discharges of untreated or partially treated effluent (bypass points) _____

Combined sewer overflow points _____

Other _____

b. Does your treatment works discharge effluent to basins, ponds, or other surface impoundments that do not have outlets for discharge to waters of the U.S.?
Yes ___ No ___

If yes, provide the following for each surface impoundment:

Location of each surface impoundment(s) _____

Annual average daily volume discharged to surface impoundment(s) _____

Is discharge ___ continuous or ___ intermittent?

c. Does your treatment works land-apply treated wastewater?
Yes ___ No ___

If yes, provide the following for each land application site:

Location _____

Number of acres _____

8. Topographic Map (cont'd)

a. The area surrounding the treatment plant, including all unit processes.

b. The pipes or other structures through which wastewater enters the treatment works and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable.

c. Each well where wastewater from the treatment plant is injected underground.

d. Wells, springs, other surface water bodies, and drinking water wells that are: 1) within 1/4 mile of the property boundaries of the treatment works, and 2) listed in public record or otherwise known to the applicant.

e. Any areas where the sewage sludge produced by the treatment works is stored, treated, or disposed.

f. If the treatment works receives waste that is classified as hazardous under the Resource Conservation and Recovery Act (RCRA) by truck, rail, or special pipe, show on the map where that hazardous waste enters the treatment works and where it is treated, stored, and/or disposed.

9. Process Flow Diagram or Schematic. Provide a diagram showing the processes of the treatment plant, including all bypass piping. Also provide a water balance showing all treatment units, including clarifiers (e.g., aeration and dechlorination). The water balance must show daily average flow rates at influent and discharge points and approximate daily flow rates between treatment units. Include a brief narrative description of the diagram. An example of a typical diagram is shown in Figure A of the instructions.

10. Bypass. Does your treatment plant have the ability to bypass untreated or partially treated wastewater?
Yes ___ No ___
If so, answer only part a.

a. How many times in the past 12 months has your treatment plant bypassed untreated or partially treated wastewater?
Wet weather ___ incidents (___ actual or ___ approx.)
Dry weather ___ incidents (___ actual or ___ approx.)

b. What was the average duration per bypass incident?
Wet weather ___ hours (___ actual or ___ approx.)
Dry weather ___ hours (___ actual or ___ approx.)

c. What was the average volume per bypass incident?
Wet weather ___ million gallons (___ actual or ___ approx.)
Dry weather ___ million gallons (___ actual or ___ approx.)

d. Briefly explain why bypass occurs at your treatment plant.

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11. Discharges and Other Disposal Methods. (cont'd.)

Annual average daily volume applied to site _____
Is land application _____ continuous or _____ intermittent?

d. Does your treatment works discharge or transport treated or untreated wastewater to another treatment works?
Yes _____ No _____

Describe the means by which the wastewater from your treatment works is discharged or transported to the other treatment works (e.g., tank, truck, pipe):

If transport is by a party other than the applicant, provide:
Transporter name _____
Mailing address _____

Contact person _____

Title _____

Phone number _____

For each treatment works that receives this discharge, provide the following:
Name _____
Mailing address _____

Contact person _____

Title _____

Phone number _____

If known, provide the NPDES permit number of the treatment works that receives this discharge.

11. Discharges and Other Disposal Methods. (cont'd.)

Provide the average daily flow rate from your treatment works into the receiving facility.
_____ mgd

e. Does your treatment works include combined sewer overflows?
Yes _____ No _____

If yes, also complete Part D of the Supplemental Application Information packet.

Does your treatment works discharge or dispose of its wastewater in a manner not included in 11.a. - 11.g. above (e.g., underground percolation, well injection)?
Yes _____ No _____

If yes, provide the following for each disposal method:
Description of method (including location and size of site(s) if applicable):

Annual daily volume disposed of by this method: _____

Is disposal through this method _____ continuous or _____ intermittent?

12. Federal Indian Reservation.

a. Is your treatment works located on a Federal Indian Reservation?
Yes _____ No _____

b. Does your treatment works discharge to a receiving water that is either on a Federal Indian Reservation or that is upstream from (and eventually flows through) a Federal Indian Reservation?
Yes _____ No _____

c. If the answer to 12.a. or 12.b. is "Yes," briefly describe.

FACILITY NAME: _____
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13. Operation/Maintenance Performed by Contractor(s).

Are any operational or maintenance aspects (related to wastewater treatment and effluent quality) of your treatment works the responsibility of a contractor?
 Yes ___ No ___

If yes, list the name, address, telephone number and status of each contractor and describe the contractor's responsibilities (attach additional pages if necessary).

Name _____
 Mailing address _____
 Telephone number _____
 Responsibilities of contractor _____

14. Scheduled Improvements, Schedules of Implementation. Provide information on any uncompleted implementation schedule or uncompleted plans for improvements that will affect the wastewater treatment, effluent quality, or design capacity of your treatment works. If your treatment works has several different implementation schedules or is planning several improvements, submit separate responses to question 14 for each. (If none, go to the directions at the bottom of this page.)

a. List the outfall number (assigned in question 15) for each outfall that is covered by this implementation schedule.
 b. Indicate whether the planned improvements or implementation schedule are:

Required by local, state, or Federal agencies.
 Yes ___ No ___

14. Scheduled Improvements, Schedules of Implementation. (cont'd.)

Planned independently of any requirement of local, state, or Federal agencies.
 Yes ___ No ___

c. Provide a narrative description of each improvement required or planned for outfall(s) listed in 14. a.

d. Provide the proposed new maximum daily influent design flow rate (if applicable).

_____ mgd

e. Provide dates imposed by any compliance schedule or any actual dates of completion for the implementation steps listed below, as applicable. For improvements planned independently of local, state, or Federal agencies, indicate planned or actual completion dates, as applicable. Indicate dates as accurately as possible.

Implementation Stage	Schedule MO / DY / YR	Actual Completion MO / DY / YR
- Begin construction	___ / ___ / ___	___ / ___ / ___
- End construction	___ / ___ / ___	___ / ___ / ___
- Begin discharge	___ / ___ / ___	___ / ___ / ___
- Attain operational level	___ / ___ / ___	___ / ___ / ___

f. Have appropriate permits/consentances concerning other Federal/state requirements been obtained?
 Yes ___ No ___

Describe briefly.

IF THIS TREATMENT WORKS DISCHARGES EFFLUENT TO WATERS OF THE UNITED STATES (AS DEFINED IN THE INSTRUCTIONS), GO TO QUESTION 15.

IF THIS TREATMENT WORKS DOES NOT DISCHARGE EFFLUENT TO WATERS OF THE UNITED STATES (AS DEFINED IN THE INSTRUCTIONS), DO NOT COMPLETE QUESTIONS 14-16. INSTEAD, GO TO QUESTION 19 (CERTIFICATION STATEMENT).

NOTE: You may also be required to complete portions of the Supplemental Application Information packet. See the Application Overview for more information.

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WASTEWATER DISCHARGES:

Complete questions 15-17 once for each outfall (including bypass points) through which effluent is discharged. Do not include information on combined sewer overflows in this section.

15. Description of Outfall.

- a. Outfall number _____
- b. Location _____
(City or town, if applicable) _____ (Zip Code) _____
- (County) _____ (State) _____
(Latitude) _____ (Longitude) _____
- c. Distance from shore (if applicable) _____ ft.
- d. Depth below surface (if applicable) _____ ft.
- e. Average daily flow rate _____ mgd
- f. Is outfall either an intermittent or a periodic discharge?
_____ Yes _____ No (go to 15.g.) If yes, provide the following information:
Number of times/year discharge occurs _____
Average duration of each discharge _____
Average flow per discharge _____ mgd
Months in which discharge occurs _____
Is outfall equipped with a diffuser? _____ Yes _____ No

16. Description of Receiving Waters. (cont'd.)

- d. Name of State Management/River Basin (if known): _____
United States Geological Survey 8-digit hydrologic cataloging unit code (if known): _____
 - e. Critical low flow of receiving stream (if applicable).
acute _____ cfs chronic _____ cfs
 - f. Total hardness of receiving stream at critical low flow (if applicable).
_____ mgd of CaCO₃
17. Description of Treatment.
- a. What is the highest level of treatment (if any) provided for the discharge from this outfall?
_____ Primary _____ Secondary _____ Equivalent to secondary _____
_____ Advanced _____ Other. Describe: _____

b. Indicate the following removal rates (as applicable):

Design BOD₅ removal of _____ %
 Design CBOD₅ removal _____ %
 Design SS removal _____ %
 Design P removal _____ %
 Design N removal _____ %
 Other _____ %

c. What type of disinfection is used for the effluent from this outfall? If disinfection varies by season, please describe.

If disinfection is by chlorination, is deschlorination used for this outfall?
_____ Yes _____ No

d. Does the treatment plant have post aeration? _____ Yes _____ No

16. Description of Receiving Waters.

- a. Type: _____ Stream/River _____ Estuary _____ Lake _____
_____ Ocean _____ Other: _____
- b. Name of receiving water: _____
- c. Name of watershed/river/stream system: _____
United States Soil Conservation Service 14-digit watershed code (if known): _____

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Approval Expires XX-XX-XX

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(for official use only)

NPDES PERMIT NUMBER:

FACILITY NAME:

EFFLUENT TESTING DATA:

All treated water and discharge effluent to waters of the United States must provide effluent testing data for the following pollutants. Provide the indicated effluent testing information required by the permitting authority for each outfall through which effluent is discharged. Do not include information on combined sewer overflows in this section. All information reported must be based on data collected through analyses conducted using 40 CFR Part 136 methods. In addition, this data must comply with QA/QC requirements of 40 CFR Part 136 and other appropriate QA/QC requirements for standard methods for analytes not addressed by 40 CFR Part 136. At a minimum, effluent testing data must be based on at least three pollutant scans. Refer to the instructions for further explanation and for specific pollutant scan requirements.

18. Effluent Testing Information: Conventional and Nonconventional Pollutants. All applicants that discharge to waters of the United States must provide effluent testing data for the following pollutants. Provide the indicated effluent testing information required by the permitting authority for each outfall through which effluent is discharged. Do not include information on combined sewer overflows in this section. All information reported must be based on data collected through analyses conducted using 40 CFR Part 136 methods. In addition, this data must comply with QA/QC requirements of 40 CFR Part 136 and other appropriate QA/QC requirements for standard methods for analytes not addressed by 40 CFR Part 136. At a minimum, effluent testing data must be based on at least three pollutant scans. Refer to the instructions for further explanation and for specific pollutant scan requirements.

Outfall number: _____ (Complete question 18 once for each outfall discharging effluent to waters of the United States.)

POLLUTANT	MAXIMUM DAILY VALUE		AVERAGE DAILY VALUE		MONTHLY DAILY DISCHARGE		AVERAGE DAILY DISCHARGE		ANALYTICAL METHOD	ML / MDL
	Conc.	Units	Conc.	Units	Conc.	Units	Conc.	Units		
CONVENTIONAL AND NONCONVENTIONAL COMPOUNDS:										
AMMONIA (as N)										
BIOCHEMICAL OXYGEN DEMAND (Report one)	BOD-5									
CHLORINE (TOTAL RESIDUAL, TRC)	CBOD-5									
DISSOLVED OXYGEN										
E. COLI										
ENTEROCOCCI										
FECAL COLIFORM										
HARDNESS (as CaCO ₃)										
KJELDAHL NITROGEN										
NITRATE/NITRITE										
OIL and GREASE										
PHOSPHORUS (Total)										
TOTAL DISSOLVED SOLIDS (TSD)										
TOTAL SUSPENDED SOLIDS (TSS)										
OTHER										

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OMB Number
Approval Expires XX-XX-XX

FACILITY NAME: _____
NPDES PERMIT NUMBER: _____
EPA ID NUMBER:
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CERTIFICATION:

All applicants must complete the certification section. Failure to include the certification section in an application for the purposes of this certification. All applicants must complete all applicable sections of Form 2A, as required in the Regulatory Overview. Indicate below which parts of Form 2A you have completed and are submitting. By signing the certification statement, applicants confirm that they have reviewed Form 2A and have completed all sections that apply to the facility for which this application is submitted.

19. Indicate which parts of Form 2A you have completed and are submitting:

- Basic Application Information packet
- Supplemental Application Information packet:
 - Part A (Expanded Effluent Testing Data)
 - Part B (Toxicity Testing, Biomonitoring Data)
 - Part C (Industrial User Discharges, Pretreatment, and RCRA/CERCLA Wastes)
 - Part D (Combined Sewer Systems)

ALL APPLICANTS MUST COMPLETE THE FOLLOWING CERTIFICATION.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

NOT FOR OFFICIAL USE
Name and official title _____
Signature _____

Phone number _____
Date signed _____

Upon request of the permitting authority, you must submit any other information necessary to assess wastewater treatment practices at your treatment works or identify appropriate permitting requirements.

Send this completed application to: _____
Send information concerning permit fee to: _____

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Approval Expires XX-XX-XX

EPA ID NUMBER:
(for official use only)

NPDES PERMIT NUMBER:

FACILITY NAME:

FORM 2A
NPDES

SUPPLEMENTAL APPLICATION INFORMATION

APPLICATION OVERVIEW

Form 2A has been developed in a modular format and consists of a "Basic Application Information" packet and a "Supplemental Application Information" packet. All applicants must complete the Basic Application Information packet. Some applicants also must complete portions of the Supplemental Application Information packet. To obtain the Supplemental Application Information packet, contact your permitting authority. The following items explain which parts of Form 2A you must complete.

BASIC APPLICATION INFORMATION:

All applicants must complete the Basic Application Information packet.

SUPPLEMENTAL APPLICATION INFORMATION:

A. Expanded Effluent Testing Data. A treatment works that discharges effluent to surface waters of the United States and meets one or more of the following criteria must complete Part A (Expanded Effluent Testing Data) of the Supplemental Application Information packet:

1. Has a design flow rate ≥ 1 mgd, or
2. Is required to have a pretreatment program (or has one in place), or
3. Is otherwise required by the permitting authority to provide the information.

B. Toxicity Testing Data. A treatment works that meets one or more of the following criteria must complete Part B (Toxicity Testing Data) of the Supplemental Application Information packet:

1. Has a design flow rate ≥ 1 mgd, or
2. Is required to have a pretreatment program (or has one in place), or
3. Is otherwise required by the permitting authority to submit results of toxicity testing.

C. Industrial User Discharges, Pretreatment, and RCRA/CERCLA Wastes.

A treatment works that accepts process wastewater from any significant industrial users (SIUs) or receives RCRA or CERCLA wastes must complete Part C (Industrial User Discharges, Pretreatment and RCRA/CERCLA Wastes) of the Supplemental Application Information packet. SIUs are defined as:

1. All industrial users subject to Categorical Pretreatment Standards under 40 Code of Federal Regulations (CFR) 403.6 and 40 CFR Chapter I, Subchapter N (see instructions); and
2. Any other industrial user that:
 - a. Discharges an average of 25,000 gallons per day or more of process wastewater to this treatment works (with certain exclusions); or
 - b. Contributes a process wastewater that makes up 5 percent or more of the average dry weather hydraulic or organic capacity of this treatment plant; or
 - c. Is designated as a SIU by the control authority.

Refer to the instructions for further explanation.

D. Combined Sewer Systems. A treatment works that has a combined sewer system must complete Part D (Combined Sewer Systems) of the Supplemental Application Information packet.

REMINDER: MAKE SURE YOU SIGN THE CERTIFICATION ON PAGE 7 OF THE BASIC APPLICATION INFORMATION PACKET.

Form Approved
OMB Number
Approval Expires XX-XX-XX

FACILITY NAME: _____ EPA ID NUMBER:
(for official use only)

NPDES PERMIT NUMBER: _____

FORM
2A
NPDES

PART A. EXPANDED EFFLUENT TESTING DATA

Refer to the directions on the cover page to determine whether this section applies to your treatment works. If you complete Part A, you must also complete questions 18 and 19 of the Basic Application Information packet.

Effluent Testing: 1 mgd and Pretreatment Treatment Works. If your treatment works has a design capacity greater than or equal to 1 mgd or it has (or is required to have) a pretreatment program, or otherwise required by the permitting authority to provide the data, then provide effluent testing data for the following pollutants. Provide the indicated effluent testing information and any other information required by the permitting authority for each outfall through which effluent is discharged. Do not include information on combined sewer overflows in this section. All information reported must be based on data collected through analyses conducted using 40 CFR Part 136 methods. In addition, this data must comply with QA/QC requirements of 40 CFR Part 136 and other appropriate QA/QC requirements for standard methods for analyses not addressed by 40 CFR Part 136. Indicate in the blank rows provided below any data you may have on pollutants not specifically listed in this form. At a minimum, effluent testing data must be based on at least three pollutant scans. Refer to the instructions for further explanation and for specific pollutant scan requirements.

Outfall number: _____ (Complete question A.1 once for each outfall discharging effluent to waters of the United States.)

POLLUTANT CAS REGISTRY NUMBER	MAXIMUM DAILY DISCHARGE			AVERAGE DAILY DISCHARGE			ANALYTICAL METHOD	ML / SOL
	Conc.	Units	Times	Conc.	Units	Number of Samples		
METALS (TOTAL RECOVERABLE), CYANIDE, AND PHENOLS.								
ANTIMONY 7440-360								
ARSENIC 7440-382								
BERYLLIUM 7440-41-7								
CADMIUM 7440-43-9								
CHROMIUM 7440-47-3								
COPPER 7440-50-8								
LEAD 7439-92-1								
MERCURY 7439-97-6								
NICKEL 7440-02-0								
SELENIUM 7782-49-2								
SILVER 7440-22-4								

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(for official use only)

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Outfall number _____ (Complete question A. 1. once for each outfall discharging effluent to waters of the United States.)

POLLUTANT CAS REGISTRY NUMBER	MAXIMUM DAILY DISCHARGE			AVERAGE DAILY DISCHARGE			ANALYTICAL METHOD	ML / MDL
	Conc.	Units	Mass	Conc.	Units	Mass			Number of Samples
METALS (TOTAL RECOVERABLE), CYANIDE, AND PHENOLS. (cont'd)								
THALLIUM 7440-28-0								
ZINC 7440-66-6								
CYANIDE 57-12-5								
PHENOLS, TOTAL								
Use this space (or a separate sheet) to provide information on other metals requested by the permit writer.								
VOLATILE ORGANIC COMPOUNDS.								
ACROLEIN 107-02-06								
ACRYLONITRILE 107-13-1								
BENZENE 71-43-2								
BROMOFORM 75-95-2								
CARBON TETRACHLORIDE 56-23-5								
CHLOROBENZENE 108-90-7								
CHLORODIBROMOMETHANE 124-48-1								
CHLOROETHANE 75-00-3								
2-CHLOROETHYL VINYL ETHER 110-75-8								
CHLOROFORM 67-56-3								
DICHLOROBROMOMETHANE 75-27-4								
1,1-DICHLOROETHANE 75-34-3								
1,2-DICHLOROETHANE 107-06-2								
TRANS-1,2-DICHLORO- ETHYLENE 156-60-5								

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POLLUTANT CAS REGISTRY NUMBER	MAXIMUM DAILY DISCHARGE			AVERAGE DAILY DISCHARGE			ANALYTICAL METHOD	ML / MDL
	Conc.	Units	Mass	Conc.	Units	Mass			Number of Samples
VOLATILE ORGANIC COMPOUNDS. (cont'd)								
1,1-DICHLOROETHYLENE 75-35-4								
1,2-DICHLOROPROPANE 78-87-5								
1,3-DICHLOROPROPENE 542-75-6								
ETHYLBENZENE 109-41-4								
METHYL BROMIDE 74-83-9								
METHYL CHLORIDE 74-87-3								
METHYLENE CHLORIDE 75-09-2								
1,1,2,2-TETRACHLOROETHANE 79-34-5								
TETRACHLOROETHYLENE 127-18-4								
TOLUENE 106-98-3								
1,1,1-TRICHLOROETHANE 71-55-6								
1,1,2-TRICHLOROETHANE 79-00-5								
TRICHLOROETHYLENE 79-01-5								
VINYL CHLORIDE 75-01-4								
Use this space (or a separate sheet) to provide information on other volatile organic compounds requested by the permit writer.								
ACID-EXTRACTABLE COMPOUNDS.								
P-CHLORO-M-CRESOL 59-50-7								
2-CHLOROPHENOL 95-57-8								
2,4-DICHLOROPHENOL 129-83-2								
2,6-DIMETHYLPHENOL 105-67-9								

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NPDES PERMIT NUMBER: _____

Outfall number _____ (Complete question A.1. once for each outfall discharging effluent to waters of the United States.)

POLLUTANT CAS REGISTRY NUMBER	MAXIMUM DAILY DISCHARGE			AVERAGE DAILY DISCHARGE			ANALYTICAL METHOD	ML / MDL
	Conc.	Units	Mass	Conc.	Units	Mass			Number of Samples
ACID-EXTRACTABLE COMPOUNDS. (cont'd)								
4,6-DINITRO-O-CRESOL								
594-52-1								
2,4-DINITROPHENOL								
51-28-5								
2-NITROPHENOL								
88-75-5								
4-NITROPHENOL								
100-02-7								
PENTACHLOROPHENOL								
87-86-5								
PHENOL								
108-95-2								
2,4,6-TRICHLOROPHENOL								
88-06-2								
Use this space (or a separate sheet) to provide information on other acid-extractable compounds requested by the permit writer.								
BASE-NEUTRAL COMPOUNDS.								
ACENAPHTHENE								
83-32-9								
ACENAPHTHYLENE								
208-96-8								
ANTHRACENE								
120-12-7								
BENZIDINE								
92-87-5								
BENZO(A)ANTHRACENE								
56-55-3								
BENZO(A)PYRENE								
50-32-8								
3,4-BENZOFLUORANTHENE								
205-99-2								
BENZO(GH)PERYLENE								
191-24-2								
BENZO(K)FLUORANTHENE								
207-08-9								
BIS (2-CHLOROETHOXY)								
METHANE / 111-91-1								
BIS (2-CHLOROETHYL)								
ETHER / 111-44-4								
BIS (2-CHLOROISOPROPYL								
ETHER / 102-60-1								

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NPDES PERMIT NUMBER:

FACILITY NAME:

POLLUTANT CAS REGISTRY NUMBER	MAXIMUM DAILY DISCHARGE			AVERAGE DAILY DISCHARGE			ANALYTICAL METHOD	ML / MDL	
	Conc.	Units	Mass	Units	Conc.	Units			Mass	Units	Number of Samples
Outfall number _____ (Complete question A. 1. once for each outfall discharging effluent to waters of the United States.)									
BASE-NEUTRAL COMPOUNDS (cont'd)									
BIS (2-ETHYLHEXYL) PHTHALATE /117-81-7									
4-BROMOPHENYL PHENYL ETHER /101-55-3									
BUTYL BENZYL PHTHALATE 85-68-7									
2-CHLORONAPHTHALENE 91-58-7									
4-CHLOROPHENYL PHENYL ETHER /7005-72-3									
CHRYSENE 218-01-9									
DI-N-BUTYL PHTHALATE 84-74-2									
DI-N-OCTYL PHTHALATE 117-84-0									
DIBENZO(A,H)ANTHRACENE 53-70-3									
1,2-DICHLOROBENZENE 95-50-1									
1,3-DICHLOROBENZENE 541-73-1									
1,4-DICHLOROBENZENE 106-46-7									
3,3'-DICHLOROBENZIDINE 81-94-1									
DIETHYL PHTHALATE 84-66-2									
DIMETHYL PHTHALATE 131-11-3									
2,4-DINITROTOLUENE 121-14-2									
2,6-DINITROTOLUENE 606-20-2									
1,2-DIPHENYLHYDRAZINE 122-66-7									
FLUORANTHENE 206-44-0									
FLUORENE 86-73-7									
HEXACHLOROBENZENE 118-74-1									
HEXACHLOROBUTADIENE 87-68-3									

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FACILITY NAME: _____ EPA ID NUMBER: _____
(for official use only)

NPDES PERMIT NUMBER: _____

Outfall number _____ (Complete question A.1. once for each outfall discharging effluent to waters of the United States.)

POLLUTANT CAS REGISTRY NUMBER	MAXIMUM DAILY DISCHARGE			AVERAGE DAILY DISCHARGE			ANALYTICAL METHOD	ML / MDL
	Conc.	Units	Mass	Units	Conc.	Units			Mass	Number of Samples
BASE-NEUTRAL COMPOUNDS (cont'd)								
HEXACHLOROCHYCLO- PENTADIENE/77-47-4								
HEXACHLOROETHANE 67-72-1								
INDENO(1,2,3-CD)PYRENE 183-39-5								
ISOPHORONE 78-58-1								
NAPHTHALENE 91-20-3								
NITROBENZENE 98-95-3								
N-NITROSODI- N-PROPYLAMINE/621-64-7								
NI-NITROSODIMETHYLAMINE 62-75-9								
NI-NITROSODIPHENYLAMINE 86-30-6								
PENENANTHRENE 85-01-8								
PYRENE 129-00-0								
1,2,4-TRICHLOROBENZENE 128-82-1								

Use this space (or a separate sheet) to provide information on other base-neutral compounds requested by the permit writer.

Use this space (or a separate sheet) to provide information on other pollutants (e.g., pesticides) requested by the permit writer.

END OF PART A
REFER TO THE APPLICATION OVERVIEW TO DETERMINE
WHICH OTHER PARTS OF FORM 2A YOU MUST COMPLETE.

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FACILITY NAME: _____

NIPDES PERMIT NUMBER: _____

EPA ID NUMBER:
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B.2. Individual Test Data. (cont'd.)

Test number: _____ Test number: _____

c. Give the sample collection method(s) used. For multiple grab samples, indicate the number of grab samples used.

24-Hour composite	
Grab	

d. Indicate where the sample was taken in relation to disinfection (check all that apply for each.)

Before disinfection	<input checked="" type="checkbox"/>
After disinfection	<input checked="" type="checkbox"/>
After dechlorination	<input checked="" type="checkbox"/>

e. Describe the point in the treatment process at which the sample was collected.

Sample was collected: _____

f. For each test, indicate whether the test was intended to assess chronic or acute toxicity.

Chronic toxicity	
Acute toxicity	

g. Provide the type of test performed.

Static	
Static-removal	
Flow-through	

h. Source of dilution water. If laboratory water, specify type.

Laboratory water	
Receiving water	

i. Type of dilution water. If salt water, specify "natural" or type of artificial salt water used.

Fresh water	
Salt water	

j. Give the percentage effluent used for all concentrations in the test series.

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FACILITY NAME: _____
NPDES PERMIT NUMBER: _____
EPA ID NUMBER: _____
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B.2. Individual Test Data. (cont'd.) Test number: _____ Test number: _____

k. Parameters measured during the test. (Provide minimum/maximum)	
pH	
Salinity	
Temperature	
Ammonia	
Dissolved oxygen	

i. Test Results.

Acute:			
Percent survival in 100% effluent		%	%
LC ₅₀		%	%
95% C.I.			
Other (describe)			
Chronic:			
NOEC			
IC ₂₅			
Other (describe)			
m. Control responses.			
Control Mortality		%	%
Other (describe)			

B.3. Toxicity Reduction Evaluation. Is your treatment works involved in a Toxicity Reduction Evaluation? Yes No
If yes, describe: _____
Date submitted: _____
Summary of results: (see instructions) _____

B.4. Summary of Submitted Biomonitoring Test Information. If you have submitted biomonitoring test information, or information regarding the cause of toxicity, within the past three years, provide the dates the information was submitted to the permitting authority and a summary of the results.
Date submitted: _____
Summary of results: (see instructions) _____

END OF PART B.
REFER TO THE APPLICATION OVERVIEW TO DETERMINE WHICH OTHER PARTS OF FORM 2A YOU MUST COMPLETE.

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FACILITY NAME: _____ EPA ID NUMBER:
(for official use only)

NPDES PERMIT NUMBER: _____

FORM 2A NPDES PART C. INDUSTRIAL USER DISCHARGES, PRETREATMENT, AND RCRA/CERCLA WASTES

All treatment works receiving discharges from significant industrial users or which receive RFA or CERCLA wastes must comply Part C.

GENERAL INFORMATION:

C.1. Number of Significant Industrial Users and Categorical IUs. Provide the number of each of the following types of industrial users that discharge to your treatment works.

- a. Number of non-categorical significant industrial users (SIUs). _____
 - b. Number of categorical industrial users. _____
- C.2. Average Daily Flow from Industrial Users.** Estimate the total average daily wastewater flow from all industrial users.
- a. All industrial users. _____ mgd
 - b. Non-categorical SIUs only. _____ mgd
 - c. Categorical industrial users only. _____ mgd

C.4. Pretreatment Program. Does your treatment works have an approved pretreatment program?

- Yes _____
- No _____

If yes, have there been any substantial modifications to the treatment work's approved pretreatment program that have not been approved in accordance with 40 CFR 403.18?

- Yes _____
- No _____

If yes, identify on a separate piece of paper all substantial modifications that have not been approved.

C.3. Industrial User Contributions. Estimate the percent total influent contribution for each of the following:

- All industrial users _____ %
- Non-categorical SIUs only _____ %
- Categorical industrial users only _____ %
- Domestic sources only _____ %

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FACILITY NAME:

SIGNIFICANT INDUSTRIAL USER (SIU) INFORMATION

Supply the following information for each SIU. If more than one SIU discharges to your treatment works, copy questions C.5 - C.9 and provide the information requested for each SIU.

C.5. Significant Industrial User Information. Provide the name and address of each SIU discharging to your treatment works. (Submit additional pages as necessary.)

Name _____
Mailing address _____

C.6. Industrial Processes. Describe all of the industrial processes that affect or contribute to the SIU's discharge.

C.7. Principal Product(s) and Raw Material(s).

Principal product(s): _____
Principal raw material(s): _____

C.8. Flow Rate.

a. Process wastewater flow rate. Indicate the average daily volume of process wastewater discharged into the collection system in gallons per day (gpd) and whether the discharge is continuous or intermittent.
_____ gpd (_____ continuous or _____ intermittent)

b. Non-process wastewater flow rate. Indicate the average daily volume of non-process wastewater flow discharged into the collection system in gallons per day (gpd) and whether the discharge is continuous or intermittent.
_____ gpd (_____ continuous or _____ intermittent)

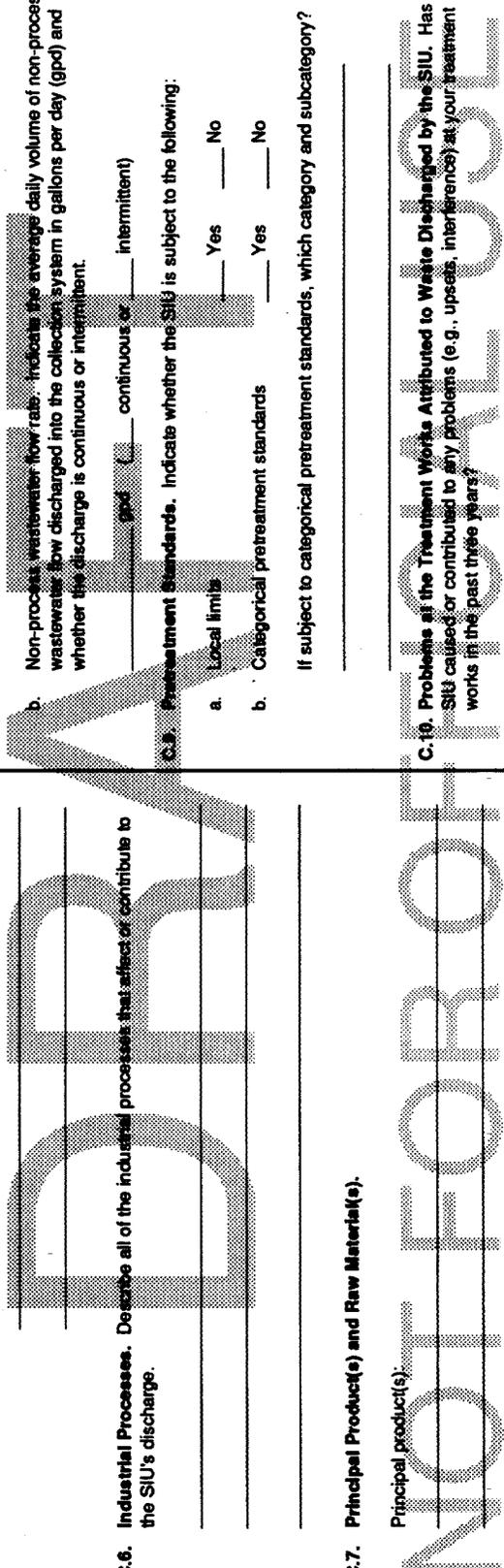
C.9. Pretreatment Standards. Indicate whether the SIU is subject to the following:

- a. Local limits _____ Yes _____ No
- b. Categorical pretreatment standards _____ Yes _____ No

If subject to categorical pretreatment standards, which category and subcategory? _____

C.10. Problems at the Treatment Works Attributed to Waste Discharged by the SIU. Has the SIU caused or contributed to any problems (e.g., upsets, interference) at your treatment works in the past three years?
_____ Yes _____ No

If yes, describe each episode.



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FACILITY NAME: _____
 NPDES PERMIT NUMBER: _____
 EPA ID NUMBER:
 (for official use only)

RCRA HAZARDOUS WASTE RECEIVED BY TRUCK, RAIL OR DEDICATED PIPELINE:

Note: You should have already indicated on the appropriate map all points at which RCRA hazardous waste enters the treatment works by truck, rail, or dedicated pipe (quantity of the waste by treatment works).

C.11. RCRA Waste. Does your treatment works receive or has it in the past three years received RCRA hazardous waste by truck, rail, or dedicated pipe?
 Yes _____
 No (go to C.14.) _____

C.12. Waste Transport. Method by which RCRA waste is received (check all that apply):
 Truck _____ Rail _____ Dedicated Pipe _____

CERCLA (SUPERFUND) WASTEWATER AND RCRA REMEDIATION/CORRECTIVE ACTION WASTEWATER:

C.14. CERCLA Waste. Does your treatment works currently (or is it expected during the life of this permit that your treatment works will) receive waste from a CERCLA (Superfund) site remediation?
 Current: Yes (complete C.15 - C.17.) _____ Future: Yes (complete G.15 - C.17.) _____
 No _____

Provide a list of sites and the requested information (C.15 - C.17.) for each current and future site.

If no CERCLA waste is currently received and none is expected in the future, go to C.18.

C.15. Waste Origin. Describe the site and type of facility at which the CERCLA waste originates (or is expected to originate in the next five years), along with EPA ID numbers.

C.16. Pollutants. List the CERCLA pollutants that are received (or are expected to be received). Include data on volume and concentration. (Attach additional sheets if necessary.)

C.13. Waste Description. Give EPA hazardous waste number and amount (volume or mass, specify units).

EPA Hazardous Waste Number	Amount	Units

C.17. Waste Treatment.

a. Is this waste treated (or will it be treated) prior to entering your treatment works?
 Yes _____ No _____

If yes, describe the treatment (provide information about the removal efficiency):

b. Is the discharge (or will the discharge be) continuous or intermittent?

Continuous _____
 Intermittent _____

If intermittent, describe discharge schedule.

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NPDES PERMIT NUMBER:

FACILITY NAME:

C.18. RCRA Corrective Action Waste. Does your treatment works currently (or is it expected during the life of this permit that your treatment works will) receive wastes generated at a site undergoing RCRA corrective action?

Current: Yes (complete C.19. - C.21.) Future: Yes (complete C.19. - C.21.)
 No No

Provide a list of sites and the requested information (C.19. - C.21.) for each site.

If no RCRA corrective action waste is currently received and none is expected in the future, go to C.22.

C.19. Waste Origin. Describe the site and type of facility at which the RCRA Corrective Action Waste originates (or is expected to originate).

C.20. Pollutants. List the pollutants contained in RCRA corrective action waste that are received (or are expected to be received). Attach additional sheets if necessary.

C.21. Waste Treatment. Is this waste treated (or will it be treated) prior to entering your treatment works?

Yes No

If yes, describe the treatment, removal efficiency, and frequency of discharge.

Is the discharge (or will the discharge be) continuous or intermittent?

Continuous Intermittent

If intermittent, describe discharge schedule.

C.22. Other Wastes from Remediation/Clean-up Sites. Describe any wastewaters received by the treatment works that are generated at a remediation/clean-up site not listed above (e.g., leaking underground tank remediation sites and state-mandated remediation sites):

**END OF PART C.
REFER TO THE APPLICATION OVERVIEW TO DETERMINE
WHICH OTHER PARTS OF FORM 2A YOU MUST COMPLETE.**

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EPA ID NUMBER:
(for official use only)

NPDES PERMIT NUMBER:

FACILITY NAME:

FORM 2A NPDES PART D. COMBINED SEWER SYSTEMS

If your response to this question is "no", complete Part D.

D.1. Combined Sewer Overflow (CSO) Discharge Points. Provide the number of CSO discharge points in the combined sewer system covered by this application.

D.2. System Map. Provide a map indicating the following:

- a. All CSO discharge points.
- b. Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding natural resource waters).
- c. Waters that support threatened and endangered species potentially affected by CSOs.

D.3. System Diagram. Provide a diagram, either in the map provided in D.2. or on a separate drawing, of the combined sewer collection system that includes the following information:

- a. Locations of major sewer trunk lines, both combined and sanitary.
- b. Locations of points where separate sanitary sewers feed into the combined sewer system.
- c. Locations of in-line and off-line storage structures.
- d. Locations of flow-regulating devices.
- e. Locations of pump stations.

D.4. System Evaluation. List below studies that have been performed since the last permit application on the collection system. Include modeling studies, hydraulic studies, past monitoring efforts, and facility plans.

Date	Title/Description	Author

GO TO D.5 ON NEXT PAGE

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EPA ID NUMBER:
(for official use only)

NPDES PERMIT NUMBER:

FACILITY NAME:

CSO OUTFALLS

Complete questions D.5., D.6. and D.8. once for each CSO discharge point.

D.5. Description of Outfall.

- a. Outfall number _____
- b. Location _____
(City or town, if applicable)
- (State) _____ (County) _____
- (Latitude) _____ (Longitude) _____
- c. Distance from shore (if applicable) _____ ft.
- d. Depth below surface (if applicable) _____ ft.

D.6. Monitoring. Which of the following were monitored during the last year for this CSO?

- _____ Rainfall _____ CSO flow volume
- _____ CSO water quality _____ Receiving water quality

How many storm events were monitored during the last year? _____

D.7. CSO Incidents.

- a. Give the number of CSO incidents in the last year.
_____ incidents (_____ actual or _____ approx.)
- b. Give the average duration per CSO incident.
_____ hours (_____ actual or _____ approx.)
- c. Give the average volume per CSO incident.
_____ million gallons (_____ actual or _____ approx.)
- d. Give the minimum rainfall that caused a CSO incident in the last year.
_____ inches of rainfall

D.8. Description of Receiving Waters.

- a. Type: _____ Stream/River _____ Estuary _____ Lake
_____ Ocean _____ Other: _____
- b. Name of receiving water: _____

D.9. Description of Receiving Waters. (cont'd.)

- c. Name of watershed/river/stream system: _____
United States Soil Conservation Service 14-digit watershed code (if known): _____
- d. Name of State Management/River Basin: _____
United States Geological Survey 8-digit hydrologic cataloging unit code (if known): _____

D.9. CSO Operations.

- a. Does the combined sewer flow include contributions from significant industrial users?
Yes _____ No _____
- b. Describe any known water quality impacts on the receiving water caused by this CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shell fish bed closings, fish kills, fish advisories, other recreational loss, or violation of any applicable State water quality standard).

END OF PART D.

REFER TO THE APPLICATIONS OVERVIEW
TO DETERMINE WHICH OTHER PARTS OF FORM 2A
YOU MUST COMPLETE.

Instructions For Completing Form 2A Application For a NPDES Permit

Background Information

Each wastewater treatment works that discharges treated effluent to waters of the United States must apply for a permit for its discharges. This permitting requirement is part of the National Pollutant Discharge Elimination System (NPDES) program, which is implemented by the U.S. Environmental Protection Agency (EPA). You can obtain a permit for your treatment works by filling out and sending in the appropriate form(s) to your permitting authority. If the State in which your treatment works is located operates its own NPDES program, then the State is your permitting authority and you should ask your State for permit application forms. On the other hand, if EPA operates the NPDES program in your State, then EPA is the permitting authority, and you must fill out and send in Form 2A.

These instructions explain how to fill out each question in Form 2A. Be sure to read the Application Overview section on the cover page of Form 2A before you start filling out the form. Not every applicant will have to fill out every section of Form 2A. The Application Overview section will help you determine which portions of Form 2A apply to your treatment works.

EPA has developed Form 2A in a modular format, consisting of two packets: The Basic Application Information packet and the Supplemental Application Information packet. At a minimum, all applicants must complete the Basic Application Information packet, which contains questions 1-19. As directed by the Application Overview section on page 1 of the form, certain applicants will also need to complete one or more parts of the Supplemental Application Information packet.

Commonly Asked Questions

What If I Need More Space for My Answer?

Some questions on Form 2A require you to write out short answers. If you need more room for your answer than is provided on the form, attach a separate sheet called "Additional Information." At the top of the separate sheet, put the name of your plant, your plant's NPDES permit number, and the number of the outfall that you are writing about. Also, next to your answer, put the question number (from Form 2A). Provide this information on any drawings or other papers that you attach to your application as well.

Will the Public Be Able to See the Information I Submit?

Any information you submit on Form 2A will be available to the public. If you send in more information than is requested on Form 2A that is considered company-privileged information, you may ask EPA to keep that extra information confidential. Note that you cannot ask EPA to keep effluent data confidential. If you want any of your plant's information to be confidential, tell EPA this when you submit your application. Otherwise, EPA may make the information public without letting you know in advance. For more information on claims of confidentiality, see EPA's business confidentiality regulations at Title 40, Part 2 of the Code of Federal Regulations (CFR).

How Do I Complete the Forms?

Answer every question on Form 2A that applies to your treatment works. If your answer to a question requires more room than there is on the form, attach additional sheets (see above). If a particular question does not apply to your treatment works, write "N/A" (meaning "not applicable") as your answer to that question. If you need advice on how to fill out these forms, write or contact your EPA Regional Office or your State office at the following address:

Completing Form 2A

Facility Name and NPDES Permit Number

At the top of each page of Form 2A, put your plant's name and NPDES permit number (if you already have been assigned one) in the appropriate boxes. Also put this information on the top of any "Additional Information" sheets you attach. Do not write anything in the space marked "EPA ID Number."

As stated above, Form 2A consists of two packets: the Basic Application Information packet and the Supplemental Application Information packet. These instructions provide directions for completing both of these packets.

Basic Application Information Packet

Paperwork Reduction Act Notice: The public reporting and recordkeeping burden for this collection of information (the Basic Application Information Packet) is estimated to average 5.3 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously

applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., S.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, Attention: Desk Officer for EPA. Include the OMB control number in any correspondence. Do not send the completed application form to these addresses.

All applicants must complete the Basic Application Information packet, which consists of questions 1-19. Note that some questions in this packet may not apply to your treatment works. For these questions, write "N/A" in the response space.

Application Overview

Read the Application Overview before completing any of Form 2A. This section will help you determine which questions and parts of Form 2A apply to your facility. Note that the permitting authority may require you to complete certain questions or provide additional information as well.

As stated above, all applicants must complete the Basic Application Information packet. However, only certain types of applicants will need to complete the Supplemental Application Information packet. Refer to the directions in the Application Overview section on Form 2A to determine which parts of the Supplemental Application Information packet you need to complete.

Treatment Works

1. Facility Information

Provide your plant's official or legal name. Do not use a nickname or short name. Also provide your plant's mailing address, a contact person at the plant, his/her title, and that person's work telephone number. The contact person should be someone who has a thorough understanding of the operation of your treatment works. The permitting authority may call this person if there are questions about the application. Also provide the actual facility address (if different than the mailing address). The facility location should be a street address (not a Post Office box number)

or other description of the actual location of the facility. Be sure to provide the city or county and state in which your facility is located.

2. Applicant Information

If someone other than the facility contact person is actually submitting this application, provide the name and mailing address of that person's organization. Also provide the name of a contact person, his/her title, and his/her work telephone number. The permitting authority may call this person if there are questions about the application.

In addition, indicate whether this applicant is the owner or operator (or both) of the treatment works. If it is neither, describe the relationship of the applicant to the treatment works (e.g., contractor). Also indicate whether you want correspondence regarding this application (phone calls, letters, the permit, etc.) directed to the applicant or to the facility address provided in question 1.

3. Existing Environmental Permits

Provide the permit number of each currently effective permit issued to the treatment works for NPDES, UIC, RCRA, PSD, and any other environmental program. If you have previously filed an application but have not yet received a permit, give the number of the application, if any. If you have more than one currently effective permit under a particular permit program, list each such permit number. List any other relevant environmental permits under "Other." These may include permits issued under the following programs: (1) Federal: Ocean Dumping Act, Section 404 of the Clean Water Act, or the Surface Mining Control and Reclamation Act; (2) State: new air emission sources in nonattainment areas under Part D of the Clean Air Act or State permits issued under Section 404 of the Clean Water Act; or (3) local: any applicable local environmental permit programs.

4. Population

For all the cities, towns, and unincorporated areas served by your plant, enter the number of people served by your plant at the time you complete this form. If you do not know the population of each area, then only provide the total population for your entire treatment works. If another treatment works discharges into your plant, give the name of that other treatment works and the population it serves.

5. Flow

a. Provide your plant's current design maximum daily influent flow rate. "Design maximum daily influent flow rate" means the average amount of wastewater flow your plant was designed to receive on a daily basis. Enter the flow number in million gallons per day (mgd). Treatment works with a design flow less than 5 mgd must provide the design influent flow rate to two decimal places. Treatment works that are greater than or equal to 5 mgd must report this to 1 decimal place. This is because fluctuations of 0.01 mgd to .09 mgd in smaller treatment works represent a significant percentage of daily flow.

b. Enter the annual average daily flow rate, in million gallons per day, that your plant actually treated this year and each of the past two years for days that your plant actually discharges. Each year's data must be based on a 12-month time period, with the 12th month of "this year" occurring no more than three months prior to this application submittal.

c. Enter the maximum daily flow rate, in million gallons per day (mgd), that your plant received this year and each of the past two years. Each year's data must be based on a 12-month time period, with the 12th month of "this year" occurring no more than three months prior to this application submittal.

6. Collection System

Indicate what type of collection system brings wastewater to your plant. If you check both of the collection systems indicated on the form, you must also provide an estimate of what percentage (in terms of miles of pipe) of your entire collection system each type represents. For example, 80 percent separate sanitary sewers would mean that 80 percent of the actual miles of pipes are separate sanitary sewers (and 20 percent are combined sewers).

- "Separate sanitary sewer" means a system of pipes that only carries:

(1) Domestic wastewater from connections to houses, hotels, non-industrial office buildings, institutions, or sanitary waste from industrial facilities.

(2) Industrial wastewater received through connections to industrial plants or facilities. This consists of water that is used in the manufacturing processes conducted at the facility.

- "Combined storm and sanitary sewer" means a system of pipes that carries a mixture of storm water runoff and sanitary wastewater.

7. Inflow and Infiltration

Estimate, in gallons per day (gpd), the average amount of water that enters the treatment works through inflow and infiltration. Also explain any actions you are taking to correct or decrease inflow and infiltration.

- "Inflow" means that water enters the sewer system from the land's surface in an uncontrolled way. Usually, this happens when surface water runs in through unsealed manhole covers. It may also happen when people illegally connect their foundation drains, roof leaders, cellar drains, yard drains, or catch basins to the sewer system.

- "Infiltration" happens when non-wastewater seeps into the sewer system from the ground. Ground water usually leaks into the sewer system through defective pipes, pipe joints, connections, or manholes.

8. Topographic Map

Provide a topographic map or maps of the area extending at least to one mile beyond the property boundaries of the facility which clearly show the following:

- The area surrounding the treatment plant, including all unit processes;

- The pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

- Each well where wastewater from the plant is injected underground;
- Wells, springs, other surface water bodies, and drinking water wells that are: (1) Within 1/4 mile of the property boundaries of the treatment plant, and (2) listed in the public record or otherwise known to you;

- Any areas where the sewage sludge produced by the treatment plant is stored, treated, or disposed;

- If the treatment works receives waste that is classified as hazardous under the Resource Conservation and Recovery Act (RCRA) by truck, rail, or special pipe, show on the map where that hazardous waste enters the treatment plant and where it is treated, stored, and/or disposed.

If a discharge structure, hazardous waste disposal site, or injection well associated with the facility is located more than one mile from the plant, include it on the map, if possible. If not, attach additional sheets describing the location of the structure, disposal site, or well, and identify the U.S. Geological Survey (or other) map corresponding to the location.

On each map, include the map scale, a meridian arrow showing north and

latitude and longitude at the nearest whole second. On all maps of rivers, show the direction of the current, and in tidal waters, show the directions of the ebb and flow tides. Use a 7½ minute series map published by the U.S. Geological Survey, which may be obtained through the U.S. Geological Survey Offices listed below. If a 7½ minute series map has not been published for your facility, then you may use a 15 minute series map from the U.S. Geological Survey. If neither a 7½ minute or 15 minute series map has been published for your facility site, use a plat map or other appropriate map, including all the requested information; in this case, briefly describe land uses in the map area (e.g., residential, commercial).

Maps may be purchased at local dealers (listed in your local yellow pages) or purchased over the counter at the following USGS Earth Science Information Centers (ESIC):

Anchorage-ESIC, 4230 University Dr., Rm. 101, Anchorage, AK 99508-4664, (907)786-7011

Lakewood-ESIC, Box 25046, Bldg. 25, Rm. 1813, Denver Federal Center, MS 504, Denver, CO 80225-0046, (303)236-5829

Lakewood Open Files-ESIC, Box 25286, Bldg. 810, Denver Federal Center, Denver, CO

Menlo Park-ESIC, Bldg. 3, Rm. 3128, MS 532, 345 Middlefield Rd., Menlo Park, CA 94025-3591, (415)329-4309

Reston-ESIC, 507 National Center, Reston, VA 22092, (703)648-6045

Rolla-ESIC, 1400 Independence Rd., MS 231, Rolla, MO 65401-2602, (314)341-0851

Salt Lake City-ESIC, 2222 West 2300 South, Salt Lake City, UT 84119, (801)975-3742

Sioux Falls-ESIC, EROS Data Center, Sioux Falls, SD 57198-0001, (605)594-6151

Spokane-ESIC, U.S. Post Office Bldg., Rm. 135, 904 W. Riverside Ave., Spokane, WA 99201-1088, (509)353-2524

Stennis Space Center-ESIC, Bldg. 3101, Stennis Space Center, MS 39529, (601)688-3541

Washington, D.C.-ESIC, U.S. Dept. of Interior, 1849 C St., NW, Rm. 2650, Washington, D.C. 20240, (202)208-4047

All maps should be either on paper or other material appropriate for reproduction. If possible, all sheets should be approximately letter size with margins suitable for filing and binding. As few sheets as necessary should be used to clearly show what is involved. Each sheet should be labeled with your facility's name, permit number, location (city, county, or town), date of drawing, and designation of the number of sheets of each diagram as "page ____ of ____."

9. Process Flow Diagram or Schematic

Provide a process flow diagram or schematic that shows how wastewater flows through your plant. On your diagram, include all bypass piping.

"Bypass piping" is a system of pipes, conduits, gates, and valves that can be used to intentionally divert wastewater flow from any part of your plant directly to a discharge point. A bypass happens before the wastewater has been fully treated. Title your diagram "Schematic Wastewater Flow." An example of a diagram or schematic is shown in Figure A below. Also write a brief description of your diagram.

In addition to the diagram, provide a water balance that shows the following items:

- All treatment units. Treatment units include all processes used to treat wastewater, such as chlorination and dechlorination units.
- The daily average flow rate (in mgd) that has entered your plant and that has been discharged from your plant over the past 12 months.
- The daily average flow rate (in mgd) *between* treatment units in your facility for the past 12 months.

Figure A—Process Flow Diagram

If possible, submit diagrams that are approximately letter size (8 ½×11 inches) and leave blank room at the edges so the permitting authority can file or bind the diagram(s) with your application. Submit the fewest number of diagrams that show the whole area. Label all of your plant's discharge points with their outfall numbers. At the top of each sheet, write your plant's name, NPDES permit number, location (city, county, or town), the date you made the diagram, and the number of each diagram sheet as "page ____ of ____" (e.g., page 2 of 4).

10. Bypass

A "bypass" is the intentional diversion of wastewater (e.g., through an arrangement of pipes, conduits, gates, and/or valves) from any portion of your treatment plant to a discharge point before that wastewater is fully treated. Bypasses are prohibited unless the criteria in 40 CFR 122.41(m) are satisfied. For questions 10.a–10.c., provide information on both wet weather and dry weather bypasses if the treatment plant has the ability to bypass untreated or partially treated wastewater.

- a. Provide the number of bypass incidents that occurred at your plant during the past 12 months. Indicate whether this is an actual or approximate number.
- b. Provide the average number of hours that each bypass lasted during the past 12 months. Indicate whether this is an actual or approximate number.
- c. Provide the average volume (in million gallons) of the bypasses over the

past 12 months. The average volume is the total number of gallons that were diverted from your plant divided by the number of bypasses. Indicate whether this is an actual or approximate number.

d. Describe why bypasses happen at your plant.

e. Provide information regarding the presence and use of backup generators at your plant.

11. Discharges and Other Disposal Methods

a. Indicate whether your treatment works discharges effluent to waters of the United States. If the answer to 11.a. is "No," then go to 11.b.

List the number of each type of outfall to waters of the United States your treatment works has. If your plant has outfalls (other than bypass points) that discharge something other than treated sanitary effluent, give the total number of these outfalls and describe what type of effluent is discharged through them.

Note: If your treatment works discharges to waters of the United States, then you must also complete the following sections of Form 2A:

- Questions 15–18;
- Refer to the Application Overview section to determine whether you must also complete the Effluent Testing Information in Part A of the Supplemental Application Information packet.

b. A surface impoundment with no point source discharge (to waters of the U.S.) is a holding pond or basin that is large enough to contain all wastewaters discharged into it. It has no places where water overflows from it. It is used for evaporation of water and very little water seeps into the ground. Your plant must report the location of each surface impoundment, on average how much water is placed in the impoundment each day, and how often water is discharged into the surface impoundment (continuous or intermittent). If your plant discharges to more than one surface impoundment, use an additional sheet (or sheets) to give this information for each impoundment. Attach the additional sheet(s) to the application form. The information on the location of the surface impoundment may be referenced on the topographic map prepared under question 8.

c. Land application is the spraying or spreading of treated wastewater over an area of land. If your plant applies wastewater to land, you must list the site location, how many acres the site is, how much water is applied (as annual average daily application), and how often the wastewater is applied to the site (continuous or intermittent). If your plant applies wastewater to more than

one site, provide the information for each site on a separate sheet (or sheets). Attach the additional sheet(s) to your application form. The information on the location of the surface impoundment may be referenced on the topographic map prepared under question 8.

d. If your plant discharges treated or untreated wastewater to another treatment works (including a municipal waste transport or collection system), provide the information requested in question 11.d. If your plant sends wastewater to more than one treatment works, provide this information for each treatment works on an additional sheet (or sheets). Attach the additional sheet(s) to your application form. Describe how the wastewater is transported to the other treatment works. Also provide the name and mailing address of the company that transports your plant's wastewater to this treatment works as well as the name, phone number, and title of the contact person at the transportation company.

Provide the name and mailing address of each treatment works that receives wastewater from your plant as well as the name, phone number, and title of the contact person at the treatment works that receives your plant's wastewater. Also, provide the NPDES number for the treatment works, if you know it. Indicate the average daily flow, in million gallons per day, that is sent from your plant to the other treatment works.

e. Indicate whether your treatment works discharges, or has the potential to discharge, through combined sewer overflows. If your response to this question is "Yes," then you must also complete Part D of the Supplemental Application Information packet.

f. If your plant disposes of its wastewater in some way that was not described by 11.a.–11.e., briefly describe how your plant discharges or disposes of its wastewater. Also give the annual daily volumes disposed of this way and indicate whether the discharge is continuous or intermittent. Other ways to discharge or dispose include underground percolation and well injection.

12. Federal Indian Reservation

Federal Indian Reservation means all land within the limits of any Indian reservation under the jurisdiction of the United States Government notwithstanding the issuance of any patent, and including rights-of-way running through the reservation. Indicate whether your plant is located on (i.e., within the limits of) a Federal

Indian Reservation and whether the water body into which your plant discharges flows through a Federal Indian Reservation after it receives your plant discharge. If you mark "Yes" for either of these questions, describe which parts of your plant are located on a Federal Indian Reservation or indicate how far upstream from a Federal Indian Reservation your plant's discharge is.

13. Operation/Maintenance Performed by Contractor(s)

If a contractor carries out any operational or maintenance aspects associated with wastewater treatment or effluent quality at this facility, provide the name, mailing address, and telephone number of each such contractor. Also provide a description of the activities performed by the contractor. Attach additional pages if necessary.

14. Scheduled Improvements, Schedules of Implementation

Provide information on any improvements to your treatment works that you are currently planning. Include only those improvements that will affect the wastewater treatment, effluent quality, or design capacity of your treatment works (such improvements may include regionalization of treatment works). Also list the schedule for when these improvements will be started and finished. If your treatment works has more than one improvement planned, use a separate sheet of paper to provide information for each one.

a. List each outfall number that is covered by the implementation schedule. The outfall numbers you use must be the same as the ones provided under question 15.

b. Indicate whether the planned improvements or implementation schedules are required by or planned independently of any local, state, or Federal agencies.

c. Provide a brief description of the improvements to be made for the outfalls listed in question 14.a.

d. If you are submitting Form 2A for a renewal of an existing NPDES permit and you plan to change your treatment works' influent design flow rate, then provide the proposed new maximum daily influent design flow rate in mgd.

e. Provide the information requested for each planned improvement. Supply dates for the following stages of any compliance schedule. For improvements that are planned independently of local, State, or Federal agencies, indicate planned or actual completion dates, as applicable. If a step has already been finished, give the date when that step was completed.

- "Begin Construction" means the date you plan to start construction.

- "End Construction" means the date you expect to finish construction.

- "Begin Discharge" means the date that you expect a discharge will start.

- "Attain Operational Level" means the date that you expect the effluent level will meet your plant's implementation schedule conditions.

f. Note whether your treatment works has received appropriate permits or clearances that are required by other Federal or State requirements. If you have received such permits, describe them.

Note: If this treatment works discharges treated wastewater to waters of the United States, go to question 15. If this treatment works does not discharge treated wastewater to waters of the United States, do not complete questions 15–18. Instead, go to question 19 (Certification Statement). (You may also be required to complete portions of the Supplemental Application Information packet.)

Effluent Discharges

Answer questions 15–17 once for each outfall through which your treatment works discharges effluent to surface waters of the United States. Do not include information about combined sewer overflow discharge points. Surface water means creeks, streams, rivers, lakes, estuaries, and oceans. If your treatment works has more than one outfall, copy and complete questions 15–17 once for each outfall.

15. Description of Outfall

a.–e. Give the outfall number and its location. For location, provide the city or town (if applicable); ZIP code; the county; the state; and the latitude and longitude to the nearest second. If this outfall is a subsurface discharge (e.g., into an estuary, lake, or ocean), indicate how far the outfall is from shore and how far below the water's surface it is. Measure the distances in feet. Give these distances at the lowest point of low tide. Also provide the average daily flow rate in million gallons per day.

f. Mark whether this outfall is a periodic or intermittent discharge. A "periodic discharge" is one that happens regularly (for example, monthly or seasonally), but is not continuous all year. An "intermittent discharge" is one that happens sometimes, but not regularly. Discharges from holding ponds, lagoons, etc., may be included as periodic or intermittent. Do not include discharges from bypass points or combined sewer overflows in your answer. Give the number of times per year a discharge occurs from this outfall. Also tell how long each

discharge lasts and how much water is discharged, in million gallons per day. List each month when discharge happens. If you do not have records of exact months in which such discharges occurred, provide an estimate based on the best available information.

g. Note whether the outfall is equipped with a diffuser. If so, provide a brief description of the type of diffuser used (e.g., high-rate).

16. Description of Receiving Waters

a. Indicate which type of water this outfall discharges into—stream/river, lake, estuary, ocean, or other (describe).

b. Give the names of the surface waters to which this outfall discharges. For example, "Control Ditch A, then into Stream B, then into River C, and finally into River D in River Basin E."

c. Provide the name of the watershed/river/stream system in which the receiving water (identified in question 16.b.) is located. If known, also provide the 14-digit watershed code assigned to this watershed by the U.S. Soil Conservation Service.

d. Provide the name of the State Management/River Basin into which

this outfall discharges. If known, also provide the 8-digit hydrologic cataloging unit code assigned by the U.S. Geological Survey.

e. If the water body is a river or stream, provide the acute and chronic critical low flow in cubic feet per second (cfs). If you are unsure of these numbers, the U.S. Geological Survey may be able to give them to you. Or you may be able to get these numbers from prior studies.

f. Give the total hardness of the receiving stream at critical low flow, in milligrams per liter of CaCO₃, if applicable.

17. Description of Treatment

a. Indicate the highest level of treatment that your plant provides for the discharge from this outfall.

b. Give the design removal rates, in percent, for biochemical oxygen demand (BOD₅) or carbonaceous biochemical oxygen demand (CBOD₅), suspended solids (SS), phosphorus (P), and nitrogen (N).

c. Describe the type of disinfection your plant uses (for example, chlorination, ozonation, ultraviolet, etc.)

and any seasonal variation that may occur. If your plant uses chlorination, indicate whether it also dechlorinates.

d. Note whether the facility has post aeration.

Effluent Testing Data

18. Effluent Testing Information: Conventional and Nonconventional Pollutants

All applicants that discharge effluent to waters of the United States must complete question 18. Refer to the Application Overview section to determine if you must also complete the Effluent Testing Information in Part A of the Supplemental Application Information packet.

Do not include information about combined sewer overflow discharge points in question 18.

Refer to the following table to determine which effluent testing information questions you must complete and to determine the number of pollutant scans on which to base your data.

Treatment works characteristics	Form 2A requirements	Minimum No. of scans (see Appendix A)
<ul style="list-style-type: none"> •Design flow rate less than 1 mgd, <i>and</i> •Not required to have (or does not have) a pretreatment program. •Design flow rate greater than or equal to 1 mgd, <i>or</i> 	Question 18	3
<ul style="list-style-type: none"> •Required to have a pretreatment program (or has one in place), <i>or</i>. •Otherwise required by the permitting authority to provide the data. 	Question 18 <i>and</i> Part A of Supplemental Application Information Packet.	3

Complete question 18 *once for each outfall* through which effluent is discharged to waters of the United States. Indicate on each page the outfall number (as assigned in questions 15–17) for which the data are provided. Using the blank rows provided on the form, submit any data the facility may have for pollutants not specifically listed in question 18.

For specific instructions on completing the pollutant tables in question 18, refer to Appendix A of these instructions.

Certification

19. Certification

Note: Before completing the Certification statement, review the Application Overview section on the cover page of Form 2A to make sure that you have completed all applicable sections of Form 2A, including any parts of the Supplemental Application Information packet.

All permit applications must be signed and certified. Also indicate in

the boxes provided which sections of Form 2A you are submitting with this application.

An application submitted by a *municipality, State, Federal, or other public agency* must be signed by either a principal executive officer or ranking elected official. A principal executive officer of a Federal agency includes: (1) The chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

An application submitted by a *corporation* must be signed by a responsible corporate officer. A responsible corporate officer means: (1) A president, secretary, treasurer, or vice president in charge of a principal business function, or any other person who performs similar policy- or decision-making functions; or (2) the manager of manufacturing, production, or operating facilities employing more

than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

An application submitted by a *partnership or sole proprietorship* must be signed by a general partner or the proprietor, respectively.

After completing the certification statement (all applicable sections of Form 2A must also be complete), submit the application to:

Supplemental Application Information Packet

EPA has developed Form 2A in a modular format, consisting of two packets: the Basic Application Information packet and the Supplemental Application Information packet. At a minimum, all applicants must complete the Basic Application Information packet. As directed by the Application Overview section on the

cover page of the form, certain applicants will also need to complete one or more parts of the Supplemental Application Information packet.

The Supplemental Application Information packet is divided into the following parts:

- Part A Expanded Effluent Testing Data
- Part B Toxicity Testing Data
- Part C Industrial User Discharges, Pretreatment, and RCRA/CERCLA Wastes
- Part D Combined Sewer Systems

Refer to the Application Overview section to determine which part(s) of the Supplemental Application Information packet you must complete.

Part A: Expanded Effluent Testing Data

Paperwork Reduction Act Notice: The public reporting and recordkeeping burden for this collection of information (Part A:

Expanded Effluent Data) is estimated to average 5.7 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, OPPE Regulatory Information Division, U.S.

Environmental Protection Agency (2136), 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503. Attention: Desk Officer for EPA. Include the OMB control number in any correspondence. Do not send the completed application form to these addresses.

Note: All applicants that discharge effluent to waters of the United States must complete question 18 of the Basic Application Information packet. Refer to the Application Overview section to determine if you must also complete the Effluent Testing Information in Part A of the Supplemental Application Information packet.

Refer to the following table to determine which effluent testing information questions you must complete and to determine the number of pollutant scans on which to base your data.

Treatment works characteristics	Form 2A requirements	Minimum No. of scans (see appendix A)
• Design flow rate less than 1 mgd, <i>and</i>	Question 18	3
• Not required to have (or does not have) a pretreatment program	Question 18 <i>and</i> Part A of Supplemental Application Information Packet.	3
• Design flow rate greater than or equal to 1 mgd, <i>or</i> .....	.....	.....
• Required to have a pretreatment program (or has one in place) <i>or</i> .....	.....	.....
• Otherwise required by the permitting authority to provide the date .....	.....	.....

The following instructions apply only to treatment works completing Part A of the Supplemental Application Information packet. Note that the permitting authority may require additional testing on a case-by-case basis.

Complete Part A *once for each outfall* through which effluent is discharged to waters of the United States. Indicate on each page the outfall number (as assigned in questions 15–17 of the Basic Application Information packet) for which the data are provided. Using the blank rows provided on the form, submit any data the facility may have for pollutants not specifically listed in Part A.

For specific instructions on completing the pollutant tables in Part A, refer to Appendix A of these instructions.

Note: After completing Part A, refer to the Application Overview section to determine which other sections of Form 2A you must complete. If you have completed all other required sections of Form 2A, you may proceed to the Certification Statement in question 19 of the Basic Application Information packet.

Part B. Toxicity Testing Data

Paperwork Reduction Act Notice: The public reporting and recordkeeping burden for this collection of information (Part B: Toxicity Testing Data) is estimated to average 4.5 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., S.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503. Attention: Desk Officer for EPA. Include the OMB control number in any correspondence.

Do not send the completed application form to these addresses.

Treatment works meeting one or more of the following criteria must submit the results of whole effluent toxicity testing:

1. Treatment works with a design influent flow rate greater than or equal to one mgd; *or*
2. Treatment works with an approved pretreatment program (as well as those required to have one); *or*
3. Treatment works otherwise required by the permitting authority to submit the results of whole effluent toxicity testing.

Applicants completing Part B must submit the results from any whole effluent toxicity test conducted during the past three years that have not been reported or submitted to the permitting authority for each outfall discharging effluent to the waters of the United States. Do not include information on combined sewer overflows in this section. If the applicant conducted a whole effluent toxicity test during the past three years that revealed toxicity, then provide any information available on the cause of the toxicity or any results of a toxicity reduction evaluation, if one was conducted.

Test results provided in Part B must be based on multiple species being

tested quarterly for a minimum of one year. For multiple species, EPA requires a minimum of two species (e.g., vertebrates and invertebrates). The permitting authority may require the applicant to include other species (e.g., plants) as well. Applicants must provide these tests for acute or chronic toxicity, depending on the range of the receiving water dilution. EPA recommends that applicants conduct acute or chronic toxicity testing based on the following dilutions:

- Acute toxicity testing if the dilution of the effluent is greater than 1000:1 at the edge of the mixing zone.
- Acute or chronic toxicity testing if the dilution of the effluent is between 100:1 and 1000:1 at the edge of the mixing zone. Acute testing may be more appropriate at the higher end of this range (1000:1), and chronic testing may be more appropriate at the lower end of this range (100:1).
- Chronic toxicity testing if the dilution of the effluent is less than 100:1 at the edge of the mixing zone.

All data provided in Part B must be based on tests performed within three years prior to completing this application. The tests must have been conducted since the last NPDES permit issuance or permit modification under 40 CFR 122.62(a). In addition, applicants only need to submit data that have not previously been submitted to the permitting authority. Thus, if test data have already been submitted (within the last three years) in accordance with an issued NPDES permit, the treatment works may note the dates the tests were submitted and need not fill out the information requested in question B.2. for that test.

Additional copies of Part B may be used in submitting the required information. A permittee having no significant toxicity in the effluent over the past year and who has submitted all toxicity test results through the end of the calendar quarter preceding the time of permit application would need to supply no additional data as toxicity testing data as part of this application. Instead, the applicant should complete question B.4., which requests a summary of bioassay test information already submitted. (See below for more detailed instructions on completing question B.4.)

Where test data are requested to be reported, the treatment works has the option of reporting the requested data on Form 2A or on reports supplied by the laboratories conducting the testing, provided the data requested are complete and presented in a logical fashion. The permitting authority

reserves the right to request that the data be reported on Form 2A.

B.1. Required Tests

a. Provide the total number of chronic and acute whole effluent toxicity tests conducted in the past three years. A "chronic" toxicity test continues for a relatively long period of time, often one-tenth the life span of the organism or more. An "acute" toxicity test is one in which the effect is observed in 96 hours or less.

B.2. Individual Test Data

Complete B.2. for each test conducted in the last three years for which data has not been submitted. Use the columns provided on the form for each test and specify the test number at the top of each column. Use additional copies of question B.2. if more than three tests are being reported. The parameters listed on the form are based on EPA-recommended test methods. Permittees may be required by the permitting authority to submit additional test parameter data for the purposes of quality assurance.

If the treatment works is conducting whole effluent toxicity tests and reporting its results in accordance with an NPDES permit requirement, then the treatment works may note the dates the tests were submitted and need not fill out the information requested in question B.2. for those tests (unless otherwise required by the permitting authority).

a. Provide the information requested on the form for each test reported. Under "Test species," provide the scientific name of the organism used in the test. The "Outfall number" reported must correlate to the outfall numbers listed in questions 15-17 of the Basic Application Information packet.

b. Provide the source of the toxicity test methods followed. In conducting the tests, the treatment works must use methods approved in accordance with 40 CFR Part 136 [Note: Approved methods are currently under development].

c. Indicate whether 24-hour composite or grab samples were used for each test. For multiple grab samples, provide the number of grab samples used. Refer to Appendix A of the instructions for a definition of composite and grab samples.

d. Indicate whether the sample was taken before or after disinfection and/or after dechlorination.

e. Provide a description of the point in the treatment process at which the sample was collected.

f. Indicate whether the test was intended to assess chronic or acute toxicity.

g. Indicate which type of test was performed. A "static" test is a test performed with a single constant volume of water. In a "static-renewal" test, the volume of water is renewed at discrete intervals. In a "flow-through" test, the volume of water is renewed continuously.

h. Indicate whether laboratory water or the receiving water of the tested outfall was used as the source of dilution water. If laboratory water was used, provide the type of water used.

i. Indicate whether fresh or salt water was used as the dilution water. For salt water, specify whether the salt water was natural or artificial (specify the type of artificial water used).

j. For each concentration in the test series, provide the percentage of effluent used.

k. Provide the minimum and maximum parameters measured during the test for pH, salinity, temperature, ammonia, and dissolved oxygen.

l. Provide the results of each test performed. For acute toxicity tests, provide the percent survival of the test species in 100 percent effluent. Also provide the LC₅₀ (Lethal Concentration to 50 percent) of the test. "LC₅₀" is the effluent (or toxicant) concentration estimated to be lethal to 50 percent of the test organisms during a specific period. Indicate any other test results in the space provided.

For chronic toxicity tests, provide data at the most sensitive endpoint. While this is generally expressed as a "NOEC" (No Observed Effect Concentration), it may be expressed as an "Inhibition Concentration" (e.g., "IC₂₅"—Inhibition Concentration to 25 percent). The NOEC is the highest measured concentration of an effluent (or a toxicant) at which no significant adverse effects are observed on the test organisms at a specific time of observation. The IC₂₅ is the effluent (or toxicant) concentration estimated to cause a 25 percent reduction in reproduction, fecundity, growth, or other non-quantal biological measurements. Indicate any other test results in the space provided.

m. Provide the mortality (in percent) of the control group. Indicate any other relevant information about the control group in the space provided.

B.3. Toxicity Reduction Evaluation

A Toxicity Reduction Evaluation (TRE) is a site-specific study conducted in a stepwise process designed to identify the causative agents of effluent toxicity, evaluate the effectiveness of

toxicity control options, and then confirm the reduction in effluent toxicity. If the treatment works is conducting a TRE as part of a NPDES permit requirement or enforcement order, then you only need to provide the date of the last progress report concerning the TRE in the area reserved for details of the TRE.

B.4. Summary of Submitted Biomonitoring Test Information

As stated above, applicants that have already submitted the results of biomonitoring test information over the past three years do not need to resubmit this data with Form 2A. Instead, indicate in question B.4. the date you submitted each report and provide a summary of the test results for each report. Include in this summary the following information: the outfall number and collection dates of the samples tested, dates of testing, toxicity testing method(s) used, and a summary of the results from the test (e.g. 100% survival in 40% effluent).

Note: After completing Part B, refer to the Application Overview section to determine which other sections of Form 2A you must complete. If you have completed all other required sections of Form 2A, you may proceed to the Certification Statement in question 19 of the Basic Application Information packet.

Part C. Industrial User Discharges, Pretreatment, and RCRA/CERCLA Wastes

Paperwork Reduction Act Notice: The public reporting and recordkeeping burden for this collection of information (Part C: Industrial User Discharges, Pretreatment, and RCRA/CERCLA Wastes) is estimated to average 4.3 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., S.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget,

725 17th St., N.W., Washington, DC 20503, Attention: Desk Officer for EPA. Include the OMB control number in any correspondence. Do not send the completed application form to these addresses.

All treatment works receiving discharges from significant industrial users (SIUs) or facilities that receive RCRA or CERCLA wastes must complete Part C.

A "categorical industrial user" is an industrial user that is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N, which are technology-based standards developed by EPA setting industry-specific effluent limits. (A list of Industrial Categories subject to Categorical Pretreatment Standards is included in Appendix B.)

A "significant industrial user" is defined in 40 CFR 403.3(t) as an industrial user that:

(1) is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; and

(2) any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the treatment works (excluding sanitary, non-contact cooling and boiler blowdown wastewater); contributes a process wastestream that makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the treatment works; or is designated as such by the Control Authority as defined in 40 CFR 403.12(a) on the basis that the industrial user has a reasonable potential for adversely affecting the treatment works operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

An "industrial user" means any industrial or commercial entity that discharges wastewater that is not domestic wastewater. Domestic wastewater includes wastewater from connections to houses, hotels, non-industrial office buildings, institutions, or sanitary waste from industrial facilities. The number of "industrial users" is the total number of industrial and commercial users that discharge to the treatment works.

For the purposes of completing the application form, please provide information on non-categorical SIUs and categorical industrial users separately.

General Information

C.1. Number of Industrial Users

Provide the number of SIUs and the number of categorical industrial users only that discharge to your treatment works.

C.2. Average Daily Flow From Industrial Users

Provide an estimate of the daily flow of wastewater, in mgd, received from all industrial users, significant industrial users only, and categorical industrial users only.

C.3. Industrial User Contributions

Estimate the contribution (in terms of the percent of total daily influent) from all industrial users, significant industrial users only, categorical industrial users only, and domestic sources only.

C.4. Pretreatment Program

Indicate whether the treatment works has an approved pretreatment program. An "approved pretreatment program" is a program administered by a treatment works that meets the criteria established in 40 CFR 403.8 and 403.9 and that has been approved by a Regional Administrator or State Director. If the answer to question C.4. is no, go to C.5.

Note: If this treatment works has or is required to have a pretreatment program, you must also complete Parts A and B of the Supplemental Application Information packet.

If the treatment works has an approved pretreatment program, identify any substantial modifications to the POTW's approved pretreatment program that have not been approved in accordance with 40 CFR 403.18.

Significant Industrial User (SIU) Information

All treatment works that receive discharges from SIUs must complete questions C.5.-C.10.

If your treatment works receives wastewater from more than one SIU, complete questions C.5.-C.10. *once for each SIU.*

C.5. Significant Industrial User Information

Provide the name and mailing address of each SIU. Submit additional pages as necessary.

C.6. Industrial Processes

Describe the actual process(es) (rather than simply listing them) at the SIU that affect or contribute to the SIU's discharge. For example, in describing a metal finishing operation, include such information as how the product is cleaned prior to finishing, what type of plating baths are in operation (e.g., nickel, chromium), how paint is applied, and how the product is polished. Attach additional sheets if necessary.

C.7. Principal Product(s) and Raw Material(s)

List principal products that the SIU generates and the raw materials used to manufacture the products.

C.8. Flow Rate

“Process wastewater” means any water that, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. Indicate the average daily volume, in gallons per day, of process wastewater and non-process wastewater that the SIU discharges into the collection system. Specify whether the discharges are continuous or non-continuous.

C.9. Pretreatment Standards

Indicate whether the SIU is subject to local limits and categorical pretreatment standards. “Local limits” are enforceable local requirements developed by treatment works to address Federal standards as well as state and local regulations.

“Categorical pretreatment standards” are national technology-based standards developed by EPA, setting industry-specific effluent limits. These standards are implemented by 40 CFR 403.6.

C.10. Problems at the Treatment Works Attributed to Waste Discharged by the SIU

Provide information concerning any problems the treatment works has experienced that are attributable to discharges from the SIUs. Problems may include upsets or interference at the plant, corrosion in the collection system, or other similar events.

RCRA Hazardous Waste Received by Truck, Rail or Dedicated Pipeline**C.11. RCRA Waste**

As defined in Section 1004(5) of the Resource Conservation and Recovery Act (RCRA), “Hazardous waste” means “a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may:

(A) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.”

Those solid wastes that are considered hazardous are listed under 40 CFR Part 261. Treatment works that

accept hazardous wastes by truck, rail, or dedicated pipeline (a pipeline that is used to carry hazardous waste directly to a treatment works without prior mixing with domestic sewage) within the property boundary of the treatment works are considered to be hazardous waste treatment, storage, and disposal facilities (TSDFs) and, as such, are subject to regulations under RCRA. Under RCRA, mixtures of domestic sewage and other wastes that commingle in the treatment works collection system prior to reaching the property boundary, including those wastes that otherwise would be considered hazardous, are excluded from regulation under the domestic sewage exclusion. Hazardous wastes that are delivered directly to the treatment works by truck, rail, or dedicated pipeline do not fall within the exclusion. Hazardous wastes received by these routes may only be accepted by treatment works if the treatment works complies with applicable RCRA requirements for TSDFs.

Applicants completing questions C.11.–C.13. should have indicated all points at which RCRA hazardous waste enters the treatment works by truck, rail, or dedicated pipe in the map provided in question 8 of the Basic Application Information packet.

C.12. Waste Transport

Indicate the method by which RCRA waste is received at the treatment works.

C.13. Waste Description

Provide the EPA hazardous waste numbers, which are located in 40 CFR Part 261, Subparts C & D, and the amount (in volume or mass) received.

CERCLA (Superfund) Wastewater and RCRA Remediation/Corrective Action Wastewater

Substances that are regulated under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) are described and listed in 40 CFR Part 302. Questions C.14.–C.22. apply to the type, origin, and treatment of CERCLA wastes currently (or expected to be) discharged to the treatment works.

C.14. CERCLA Waste

Indicate whether this treatment works currently receives waste from a CERCLA (Superfund) site or plans to accept waste from a CERCLA site in the next five years. If it does, provide the information requested in C.15.–C.17.

If the treatment works receives, or plans to receive, CERCLA waste from more than one site, complete questions C.15.–C.17, once for each site.

C.15. Waste Origin

Provide information about the CERCLA site that is discharging waste to the treatment works. Information must include a description of the type of facility and an EPA identification number if one exists.

C.16. Pollutants

Provide a list of the pollutants that are or will be discharged by the CERCLA site and the volume and concentration of such pollutants.

C.17. Waste Treatment

Provide information concerning the treatment used (if any) by the CERCLA site to treat the waste prior to discharging it to the treatment works. The information should include a description of the treatment technology, information on the frequency of the discharge (continuous or intermittent) and any data concerning removal efficiency.

C.18. RCRA Corrective Action Waste

Indicate whether this treatment works currently receives RCRA Corrective Action Waste or plans to accept RCRA Corrective Action Waste in the next five years. If it does, provide the information requested in C.19.–C.21.

If there is more than one site from which RCRA Corrective Action Waste is, or is expected to be, received, attach additional sheets with the information requested in questions C.19.–C.21. for each site.

C.19. Waste Origin

Provide a description of the site and of the type of facility that discharges or is expected to discharge the RCRA corrective action waste.

C.20. Pollutants

Provide a list of the pollutants that are or will be discharged by each RCRA corrective action site.

C.21. Waste Treatment

Provide information concerning the treatment used (if any) by the RCRA corrective action site to treat the waste prior to discharging it to the treatment works. The information should include a description of the treatment technology, any data concerning removal efficiency, and information on the frequency of the discharge (continuous or intermittent). If the discharge is intermittent, describe the discharge schedule.

C.22. Other Wastes From Remediation/Clean-up Sites

Describe any wastewater received or expected to be received from leaking

underground tank remediation sites and from remediation/cleanup sites that are regulated by other laws (state, municipal, etc.).

Note: After completing Part C, refer to the Application Overview section to determine which other sections of Form 2A you must complete. If you have completed all other required sections of Form 2A, you may proceed to the Certification Statement in question 19 of the Basic Application Information packet.

Part D. Combined Sewer Systems

Paperwork Reduction Act Notice: The public reporting and recordkeeping burden for this collection of information (Part D: Combined Sewer Systems) is estimated to average 8.2 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., S.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, Attention: Desk Officer for EPA. Include the OMB control number in any correspondence. Do not send the completed application form to these addresses.

D.1. Combined Sewer Overflow (CSO) Discharge Points

A combined sewer system collects a mixture of both sanitary wastewater and storm water runoff.

Indicate the number of CSO discharge points in the combined sewer system covered by this application. Complete questions D.5.–D.9. *once for each discharge point.* Attach additional pages as necessary.

D.2. System Map

Indicate on a system map all CSO discharge points. For each such point, indicate any sensitive use areas and any waters supporting threatened or endangered species that are potentially affected by CSOs. Sensitive use areas include beaches, drinking water supplies, shellfish beds, sensitive

aquatic ecosystems, and outstanding natural resource waters.

Applicants may provide the information requested in question D.2. on the map submitted in response to question 8 in the Basic Application Information packet.

All maps should be either on paper or other material appropriate for reproduction. If possible, all sheets should be approximately letter size with margins suitable for filing and binding. As few sheets should be used as necessary to show clearly what is involved. All discharge points should be identified by outfall number. Each sheet should be labeled with the applicant's name, NPDES permit number, location (city, county, or town), date of drawing, and designation of the number of sheets of each diagram as "page _____ of _____."

D.3. System Diagram

Diagram the location of combined and separate sanitary major sewer trunk lines and indicate any connections where separate sanitary sewers feed into the combined sewer system. Clearly indicate the location of all flow controlling devices in the system. Include storage equipment, flow regulating devices, and pump stations. Also indicate the areas of drainage associated with each CSO and the pumping capacity of each pump station.

The drawing should be either on paper or other material appropriate for reproduction. If possible, all sheets should be approximately letter size with margins suitable for filing and binding. As few sheets should be used as necessary to show clearly what is involved. All discharge points should be identified by outfall number. Each sheet should be labeled with the applicant's name, NPDES permit number, location (city, county, or town), date of drawing, and designation of the number of sheets of each diagram as "page _____ of _____."

D.4. System Evaluation

List any studies that have been performed on the combined sewer system since the last permit application, including inflow/infiltration studies, engineering studies, hydraulic studies, and water quality studies.

CSO Outfalls

Fill out a copy of questions D.5.–D.9. *once for each CSO discharge point.* Attach additional pages as necessary.

D.5. Description of Outfall

a.–d. Provide the outfall number and location (including city or town if applicable, state, county, and latitude

and longitude to the nearest second). For subsurface discharges (e.g., discharges to lakes, estuaries, and oceans), provide the distance (in feet) of the discharge point from the shore and the depth (in feet) of the discharge point below the surface of the discharge point. Provide these distances at the lowest point of low tide.

D.6. Monitoring

Indicate whether rainfall, CSO flow volume, CSO water quality, and/or receiving water quality were monitored during the past 12 months. Provide the number of storm events monitored during the past 12 months as well.

D.7. CSO Incidents

a. Provide the number of CSO incidents that have occurred in the past 12 months. Indicate whether this is an actual or approximate number.

b. Provide the average duration (in hours) per CSO event. Indicate whether this is an actual or approximate value.

c. Provide the average volume (in million gallons) of discharge per CSO incidents over the past 12 months. Indicate whether this is an actual or approximate number.

d. Provide the minimum amount of rainfall that caused a CSO incident in the past 12 months.

D.8. Description of Receiving Waters

a. Indicate the type of water body into which the CSO outfall (identified in D.5.a.) discharges.

b. List the name(s) of immediate receiving waters starting at the CSO discharge point and moving downstream. For example, "Control Ditch A, thence to Stream B, thence to River C, and thence to River D in the River Basin E."

c. Provide the name of the watershed/river/stream system in which the receiving water (identified in question D.8.b.) is located. If known, also provide the 14-digit watershed code assigned to this watershed by the U.S. Soil Conservation Service.

d. Provide the name of the State Management/River Basin into which this outfall discharges. If known, also provide the 8-digit hydrologic cataloging unit code assigned by the U.S. Geological Survey.

D.9. CSO Operations

a. Indicate whether wastewater from significant industrial users (refer to the instructions to Part C for a definition) can enter the combined sewer system.

b. Provide a description of any known water quality impacts on the receiving water caused by CSO from this discharge point.

Note: After completing Part D, refer to the Application Overview section to determine which other sections of Form 2A you must complete. If you have completed all other required sections of Form 2A, you may proceed to the Certification Statement in question 19 of the Basic Application Information packet.

Appendix A—Guidance for Completing the Effluent Testing Information

All Treatment Works

All applicants must provide data for each of the pollutants in question 18 of the Basic Application Information packet. Some applicants must also provide data for the pollutants in Part A of the Supplemental Application Information packet. All applicants submitting effluent testing data must base this data on a minimum of three pollutant scans. All samples analyzed must be representative of the discharge from the sampled outfall.

If you have existing data that fulfills the requirements described below, you may use that data in lieu of conducting additional sampling. If you measure more than the required number of daily values for a pollutant and those values are representative of your wastestream, you must include them in the data you report. In addition, use the blank rows provided on the form to provide any existing sampling data that your facility may have for pollutants not listed in the appropriate sections. All data provided in the application must be based on samples taken within three years prior to the time of this permit application.

Sampling data must be representative of the treatment works' discharge and take into consideration seasonal variations. At least two of the samples used to complete the effluent testing information questions must have been taken no fewer than 4 months and no more than 8 months apart. For example, one sample may be taken in April and another in October to meet this requirement. Applicants unable to meet this time requirement due to periodic, discontinuous, or seasonal discharges can obtain alternative guidance on this requirement from their permitting authority.

The collection of samples for the reported analyses should be supervised by a person experienced in performing wastewater sampling. Specific requirements contained in the applicable analytical methods should be followed for sample containers, sample preservation, holding times, and collection of duplicate samples. Samples should be taken at a time representative of normal operation. To the extent feasible, all processes that contribute to wastewater should be in

operation and the treatment system should be operating properly with no system upsets. Samples should be collected from the center of the flow channel (where turbulence is at a maximum), at a location specified in the current NPDES permit, or at any location adequate for the collection of a representative sample.

A minimum of four grab samples must be collected for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, E. coli, and enterococci (applicants need only provide data on either fecal coliform or E. coli and enterococci). For all other pollutants, 24-hour composite samples must be collected. However, a minimum of one grab sample, instead of a 24-hour composite, may be taken for effluent from holding ponds or other impoundments that have a retention period greater than 24 hours.

Grab and composite samples are defined as follows:

- Grab sample: an individual sample of at least 100 milliliters collected randomly for a period not exceeding 15 minutes.
- Composite sample: a sample derived from two or more discrete samples collected at equal time intervals or collected proportional to the flow rate over the compositing period. The composite collection method may vary depending on pollutant characteristics or discharge flow characteristics.

The permitting authority may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which sampling takes place, the duration between sampling events, and protocols for collecting samples under 40 CFR Part 136. Contact EPA or the State permitting authority for detailed guidance on sampling techniques and for answers to specific questions. The following instructions explain how to complete each of the columns in the pollutant tables in the effluent testing information sections of Form 2A.

Maximum Daily Discharge. For composite samples, the daily discharge is the average pollutant concentration and total mass found in a composite sample taken over a 24-hour period. For grab samples, the daily discharge is the arithmetic or flow-weighted total mass or average pollutant concentration found in a series of at least four grab samples taken during the operating hours of the treatment works during a 24-hour period.

To determine the maximum daily discharge values, compare the daily discharge values from each of the sample events. Report the highest total

mass and highest concentration level from these samples.

- "Concentration" is the amount of pollutant that is present in a sample with respect to the size of the sample. The daily discharge concentration is the average concentration of the pollutant throughout the 24-hour period.

- "Mass" is calculated as the total mass of the pollutant discharged over the 24-hour period.

- All data must be reported as both concentration and mass (where appropriate). Use the following abbreviations in the columns headed "Units."

ppm	Parts per million.
gpd	Gallons per day.
mgd	Million gallons per day.
su	Standard units.
mg/l	Milligrams per liter.
ppb	Parts per billion.
ug/l	Micrograms per liter.
lbs	Pounds.
ton	Tons (English tons).
mg	Milligrams.
g	Grams.
kg	Kilograms.
T	Tonnes (metric tons).

Average Daily Discharge. The average daily discharge is determined by calculating the arithmetic mean daily pollutant concentration and the arithmetic mean daily total mass of the pollutant from each of the sample events within the three years prior to this permit application. Report the concentration, mass, and units used under the Average Daily Discharge column, along with the number of samples on which the average is based. Use the unit abbreviations shown above in "Maximum Daily Discharge."

If data requested in Form 2A have been reported on the treatment works' Discharge Monitoring Reports (DMRs), you may compile such data and report it under the maximum daily discharge and the average daily discharge columns of the form.

Analytical Method. All information reported must be based on data collected through analyses conducted using 40 CFR Part 136 methods. Applicants should use methods that enable pollutants to be detected at levels adequate to meet water quality-based standards. Where no approved method can detect a pollutant at the water quality-based standards level, the most sensitive approved method should be used. If the applicant believes that an alternative method should be used (e.g., due to matrix interference), the applicant should obtain prior approval from the permitting authority. If an alternative method is specified in the existing permit, the applicant should

use that method unless otherwise directed by the permitting authority. Where no approved analytical method exists, an applicant may use a suitable method but must provide a description of the method. For the purposes of the application, "suitable method" means a method that is sufficiently sensitive to measure as close to the water quality-based standard as possible.

Indicate the method used for each pollutant in the "Analytical Method" column of the pollutant tables. If a method has not been approved for a pollutant for which you are providing data, you may use a suitable method to measure the concentration of the pollutant in the discharge, and provide a detailed description of the method used or a reference to the published method. The description must include the sample holding time, preservation techniques, and the quality control measures used. In such cases, indicate the method used and attach to the application a narrative description of the method used.

Reporting Levels. The applicant should provide the method detection limit (MDL), minimum level (ML), or other designated method endpoint reflecting the precision of the analytical method used.

All analytical results must be reported using the actual numeric values determined by the analysis. In other words, even where analytical results are below the detection or quantitation level of the method used, the actual data should be reported, rather than reporting "non-detect" ("ND") or "zero" ("0"). Because the endpoint of the method has also been reported along with the test results, the permitting

authority will be able to determine if the data are in the "non-detect" or "below quantitation" range.

For any dilutions made and any problems encountered in the analysis, the applicant should attach an explanation and any supporting documentation with the application. For GC/MS, report all results found to be present by spectral confirmation (i.e., quantitation limits or detection limits should not be used as a reporting threshold for GC/MS).

Total Recoverable Metals. Total recoverable metals are measured from unfiltered samples using EPA methods specified in 40 CFR Part 136.3. A digestion procedure is used to solubilize suspended materials and destroy possible organic metal complexes. The method measures dissolved metals plus those metals recovered from suspended particles by the method digestion.

Appendix B: Industrial Categories Subject to National Categorical Pretreatment Standards

Industrial Categories With Pretreatment Standards in Effect

Aluminum Forming
Asbestos Manufacturing
Battery Manufacturing
Builder's Paper and Board Mills
Carbon Black Manufacturing
Coil Coating
Copper Forming
Electrical and Electronic Components
Electroplating
Feedlots
Ferroalloy Manufacturing
Fertilizer Manufacturing
Glass Manufacturing
Grain Mills Manufacturing
Ink Formulating

Inorganic Chemicals
Iron and Steel Manufacturing
Leather Tanning and Finishing
Metal Finishing
Metal Molding and Casting
Nonferrous Metals Forming and Metal Powders
Nonferrous Metals Manufacturing
Organic Chemicals, Plastics and Synthetic Fibers
Paint Formulating
Paving and Roofing
Pesticide Manufacturing
Petroleum Refining
Pharmaceutical Manufacturing
Porcelain Enameling
Pulp, Paper and Paperboard
Rubber Manufacturing
Soap and Detergents Manufacturing
Steam Electric Power Generating
Sugar Processing
Timber Products Manufacturing
Industrial Categories With Effluent Guidelines Currently Under Development (Proposed and Final Action Dates)

Pulp, Paper, and Paperboard (12/17/93–TBD)
Pesticide Formulating, Packaging, and Repackaging (4/14/94–8/95)
Centralized Waste Treatment (12/15/94–9/96)
Pharmaceutical Manufacturing (2/95–8/96)
Metal Products and Machinery, Phase I (3/95–9/96)
Industrial Laundries (12/96–12/98)
Transportation Equipment Cleaning (12/96–12/98)
Landfills and Incinerators (3/97–3/99)
Metal Products and Machinery, Phase II (12/97–12/99)

BILLING CODE 6560-50-P

Form Approved
OMB Number
Approval Expires XX-XX-XX

FACILITY NAME: _____
EPA ID NUMBER:
(for official use only)

NPDES PERMIT NUMBER: _____

FORM
25
NPDES

PRELIMINARY INFORMATION

This page is designed to indicate whether the applicant is to complete Part 1 or Part 2. Review each category, and then complete Part 1 or Part 2, as indicated. For purposes of this form, the term "you" refers to the applicant. "This facility" and "your facility" refer to the facility for which application information is submitted.

FACILITIES INCLUDED IN ANY OF THE FOLLOWING CATEGORIES MUST COMPLETE PART 2.

1. Facilities that are required to have air emissions control specific pollutant limits. (This includes "stack-only" facilities that are applying for air-specific pollutant limits.)
2. Facilities with a currently effective NPDES permit.
3. Facilities which have been directed by the permitting authority to submit a full permit application at this time.

ALL OTHER FACILITIES MUST COMPLETE PART 1.

DRAFT

NOT FOR OFFICIAL USE

Form Approved
OMB Number
Approval Expires XX-XX-XX

EPA ID NUMBER:
(for official use only)

NPDES PERMIT NUMBER:

PART 1: LIMITED BACKGROUND INFORMATION

This part should be completed only by "single-use" facilities—that is, facilities that do not currently have, and are not applying for, an NPDES permit for a direct discharge to a surface body of water. This part also does not pertain to facilities that are requesting, or that are required to have, an NPDES permit for a direct discharge to a surface body of water. For purposes of this form, the term "year" refers to the applicant, "this facility" and "year facility" refer to the facility for which application information is submitted.

1. Facility Information.

a. Facility name

b. Mailing address

c. Contact person

Title

Phone number

d. Facility address
(not P.O. Box)

e. Indicate the type of facility:

- Publicly owned treatment works (POTW)
- Privately owned treatment works
- Federally owned treatment works
- Blending or treatment operation
- Surface disposal site
- Sewage sludge incinerator
- Other. If other, explain:

2. Applicant Information. If the applicant is different from the above, provide the following:

a. Applicant name

b. Mailing address

c. Contact person

2. Applicant Information. (cont'd).

Title

Phone number

d. Is the applicant the owner or operator (or both) of this facility?

_____ owner _____ operator _____ other (describe) _____

e. Indicate whether correspondence regarding this permit should be directed to the facility or the applicant.

_____ facility _____ applicant

3. Sewage sludge amount. Provide the total dry matter tons per latest 365-day period of sewage sludge handled under the following practices:

- a. Amount generated at the facility: _____
- b. Amount received from off site: _____
- c. Amount treated or blended on site: _____
- d. Amount sold or given away in a bag or other container to applicant or to the land: _____
- e. Amount of bulk sewage sludge shipped off site for treatment or blending: _____
- f. Amount applied to the land in bulk form: _____
- g. Amount placed on a surface disposal site: _____
- h. Amount fired in a sewage sludge incinerator: _____
- i. Amount sent to a municipal solid waste landfill: _____
- j. Amount used or disposed by another practice: _____

Describe: _____

Form Approved
OMB Number
Approval Expires XX-XX-XX

EPA ID NUMBER:
(for official use only)

NPDES PERMIT NUMBER:

FACILITY NAME:

6. Sewage Sludge Sent to Other Facilities. Is sewage sludge from your facility provided to another facility for treatment, distribution, use, or disposal?

Yes No

If yes, provide the following information for the facility receiving the sewage sludge:

- a. Name of facility: _____
- b. Facility contact. Name: _____ Title: _____ Phone: (____) _____
- c. Facility mailing address. Street or P.O. Box: _____ City or Town: _____ State: _____ Zip: _____
- d. Which activities does the receiving facility provide? (check all that apply):
 Treatment or blending
 Sale or giveaway in bag or other container
 Land application
 Sewage disposal
 Other (describe): _____

7. Use and Disposal Sites. (cont'd)

d. Site type:

- Agricultural
- Forest
- Public contact
- Reclamation
- Other (describe): _____
- Lawn or home garden
- Surface disposal
- Incineration
- Municipal Solid Waste Landfill

Certification. I certify under penalty of law that this document and all attachments were prepared under my supervision and pursuant to instructions to determine whether an officer for purposes of this certification.

I certify under penalty of law that this document and all attachments were prepared under my supervision and pursuant to instructions to determine whether an officer for purposes of this certification. I assure that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

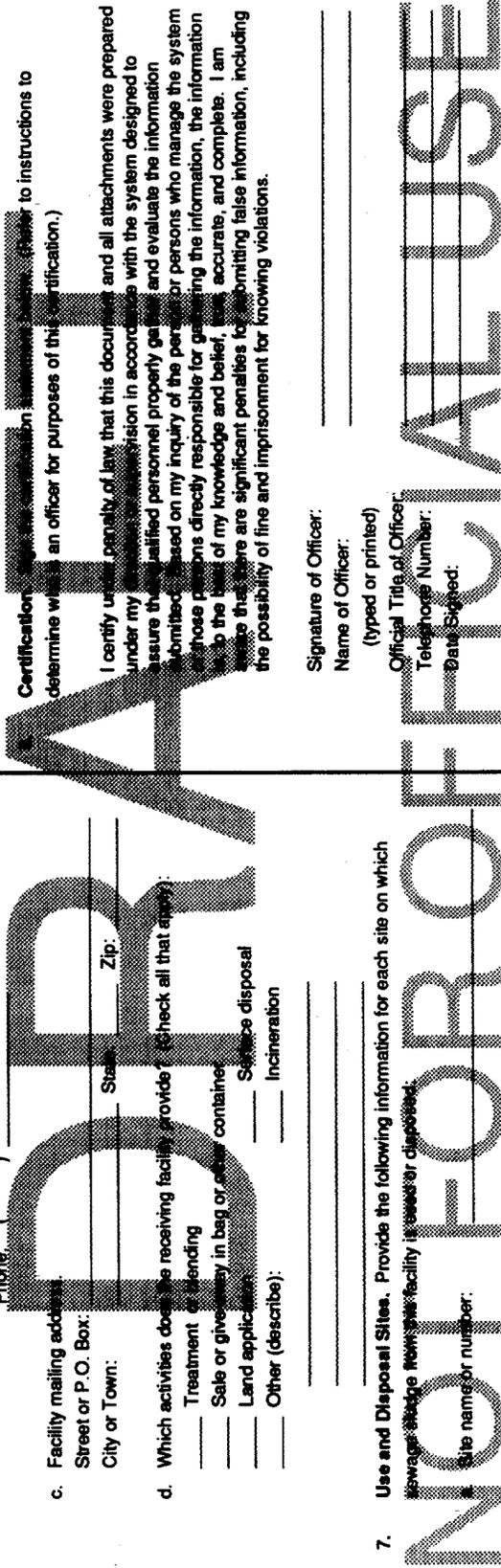
Signature of Officer:
Name of Officer:

(typed or printed)
Official Title of Officer:
Telephone Number:
Date Signed:

7. Use and Disposal Sites. Provide the following information for each site on which sewage sludge from your facility is used or disposed.

- a. Site name or number: _____
- b. Site contact. Name: _____ Title: _____ Phone: (____) _____
- c. Site location. (Complete 1 or 2)
 1. Street or Route #: _____
 County: _____ State: _____ Zip: _____
 City or Town: _____
 2. Latitude _____ Longitude _____

Send the completed application form to:



Form Approved
OMB Number
Approval Expires XX-XX-XX

EPA ID NUMBER:
(for official use only)

NPDES PERMIT NUMBER:

FACILITY NAME:

PART 2: PERMIT APPLICATION INFORMATION

Complete this form to answer "yes" to any of the questions in this Part 2. If you answer "no" to all questions, you do not need a permit. If you answer "yes" to any question, you must submit a permit application to the EPA Region Office that has jurisdiction over your facility. For information on how to apply for a permit, see the "How to Apply for a Permit" section of this form. For information on how to apply for a permit, see the "How to Apply for a Permit" section of this form.

APPLICATION OVERVIEW — SEWAGE SLUDGE USE OR DISPOSAL INFORMATION

Part 2 is divided into five sections (A-E). Sections A, B, and C are to be completed by all applicants. The applicability of Sections D, E, and F depends on your facility's sewage sludge management practices. Sections D, E, and F are to be completed by applicants who own or operate a surface disposal unit.

1. **SECTION A: GENERAL INFORMATION.**
Section A must be completed by all applicants.
2. **SECTION B: GENERATION OF SEWAGE SLUDGE OR PREPARATION OF A MATERIAL DERIVED FROM SEWAGE SLUDGE.**
Section B must be completed by applicants who either:
 - 1) Generate sewage sludge, or
 - 2) Derive a material from sewage sludge.
3. **SECTION C: LAND APPLICATION OF BULK SEWAGE SLUDGE.**
Section C must be completed by applicants who either:
 - 1) Apply sewage to the land, or
 - 2) Generate sewage sludge which is applied to the land by others.

NOTE: Applicants who meet either or both of the two above criteria are exempted from this requirement if all sewage sludge from their facility falls into one of the following three categories:

 - 1) The sewage sludge from this facility meets the ceiling and pollutant concentrations, Class A pathogen reduction requirements, and one of vector attraction reduction options 1-8, as identified in the instructions, or
 - 2) The sewage sludge from this facility is placed in a bag or other container for sale or give-away for application to the land, or
 - 3) The sewage sludge from this facility is sent to another facility for treatment or blending.
4. **SECTION D: SURFACE DISPOSAL.**
Section D must be completed by applicants who own or operate a surface disposal unit.
5. **SECTION E: INCINERATION.**
Section E must be completed by applicants who own or operate a sewage sludge incinerator.

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A. GENERAL INFORMATION

All applicants must complete this section.

A.1. Facility Information.

- a. Facility name _____
- b. Mailing address _____
- c. Contact person _____
Title _____
Phone number _____
- d. Facility address (not P.O. Box) _____
- e. Facility latitude: _____ Facility longitude: _____

Method of latitude/longitude determination:

- _____ USGS map _____ Other (describe): _____
- _____ Field survey _____

f. Is this facility a Class I sludge management facility?

Yes _____ No _____

If yes, submit the results of a toxicity characteristic leaching procedure (TCLP) performed on this facility's sewage sludge. Submit the results of all TCLPs performed during the last five years, if not previously submitted.

g. Facility design influent flow rate: _____ mgd

h. Total population served: _____

A.1. Facility Information.(cont'd)

- i. Indicate the type of facility:
 - _____ Publicly owned treatment works (POTW)
 - _____ Privately owned treatment works
 - _____ Federally owned treatment works
 - _____ Blending or treatment operation
 - _____ Surface disposal site
 - _____ Sewage sludge incinerator
 - _____ Other (describe): _____

A.2. Applicant Information. If the applicant is different from the above, provide the following:

- a. Applicant name _____
- b. Mailing address _____

Contact person _____

Title _____

Phone number _____

d. Is the applicant the owner or operator (or both) of this facility?

_____ owner _____ operator _____ other (describe) _____

e. Indicate whether correspondence regarding this permit should be directed to the facility or the applicant.

_____ facility _____ applicant

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A.3. Permit Information.

- a. Facility's NPDES permit number (if applicable): _____
- b. List on this form or an attachment, all other Federal, State, and local permits or construction approvals received or applied for that regulate this facility's sewage sludge management practices:

Permit Number: _____ Type of Permit: _____

A.4. Federal Indian Reservation. Does any generation, treatment, storage, application to land, or disposal of sewage sludge from this facility occur on a Federal Indian Reservation?

Yes _____ No _____

If yes, describe:

A.5. Topographic Map. Provide a topographic map or maps (or other appropriate map(s) if a topographic map is unavailable) that shows the following items of information. Map(s) should include the area one mile beyond all property boundaries of the facility.

- a. Location of all sewage sludge management facilities including land application sites and locations where sewage sludge is generated, treated, or disposed.

- b. Location of all water bodies within one mile beyond the facility's property boundaries.

- c. Location of all wells used for drinking water listed in public records or otherwise known to the applicant within 1/4 mile of the facility property boundaries.

A.6. Line Drawing. Provide a line drawing and/or a narrative description that identifies all sewage sludge processes that will be employed during the term of the permit, including all processes used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each unit, and all methods used for pathogen reduction and vector attraction reduction.

A.7. Contractor Information.

Are any operational or maintenance aspects of this facility related to sewage sludge generation, treatment, use or disposal the responsibility of a contractor?

Yes _____ No _____

If yes, provide the following for each contractor (attach additional pages if necessary):

Name: _____
Street or P.O. Box: _____
City or Town: _____ State: _____ Zip: _____

Phone: () _____
Responsibilities of contractor: _____

A.8. Pollutant Concentrations. Using the table below or a separate attachment, provide data on the pollutant concentrations in sewage sludge from this facility, specified in A. 8.a. and A. 8.b. (NOTE: Your permitting authority may require you to submit additional information.)

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A.8.a. Monitoring Information for All Facilities. All facilities must provide the information requested below. Information must be based on at least one sample. If you have existing information from multiple samples, provide up to three data points taken at least one month apart. Data provided for the pollutants listed below must be no more than two years old.

A.8.b. Additional Monitoring Information for Class I Sludge Management Facilities. Class I sludge management facilities must provide the information requested below. Information must be based on at least one sample. If you have existing information from multiple samples, provide up to three data points taken at least one month apart. Data provided for the pollutants listed below must be no more than two years old.

POLLUTANT NAME (USE AGENCY USE ONLY)	CONCENTRATION (including any sample)	ANALYSIS DATE	ANALYTICAL METHOD	DETECTION LEVEL (FOR ANALYSIS)
PART 503 METALS				
ARSENIC 7440-38-2				
CADMIUM 7440-43-9				
CHROMIUM 7440-47-3				
COPPER 7440-50-8				
LEAD 7439-92-1				
MERCURY 7439-97-6				
MOLYBDENUM 7439-98-7				
NICKEL 7440-02-0				
SELENIUM 7782-49-2				
ZINC 7440-66-6				
NUTRIENTS				
TKN				
AMMONIA				
NITRATE				
TOTAL PHOSPHORUS				
OTHER				
PERCENT SOLIDS				
OTHER METALS AND CYANIDE				
ANTIMONY 7440-96-0				
BERYLLIUM 7440-41-7				
SILVER 7440-22-4				
LITHIUM 7439-95-0				
CYANIDE 57-08-6				
VOLATILE ORGANIC COMPOUNDS				
ACROBEN 107-02-7				
TRICHLOROETHYLENE 107-11-3				
BENZENE 71-43-2				
BROMOFORM 75-25-2				
CARBON TETRACHLORIDE 56-23-5				
CHLOROBENZENE 108-90-7				
CHLORODIBROMOMETHANE 124-48-1				
CHLOROETHANE 78-06-2				
2-CHLOROETHYL VINYL ETHER 110-72-8				
CHLOROFORM 67-63-2				
DICHLOROBROMOMETHANE 75-27-4				
1,1-DICHLOROETHANE 75-34-3				
1,2-DICHLOROETHANE 107-06-2				
TRANS-1,2-DICHLOROETHYLENE 156-60-5				
1,1-DICHLOROETHYLENE 75-35-4				
1,2-DICHLOROPROPANE 78-87-5				
1,3-DICHLOROPROPENE 542-75-6				
ETHYLBENZENE 100-41-4				
METHYL BROMIDE 74-83-9				

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A.8.b. Monitoring Information for Class I Sludge Management Facilities (cont'd)

POLLUTANT NAME (USE REGULATORY NUMBER)	CONCENTRATION Reporting unit	SAMPLE DATE	ANALYTICAL METHOD	DETECTION LIMIT FOR ANALYSIS	POLLUTANT NAME (USE REGULATORY NUMBER)	CONCENTRATION Reporting unit	SAMPLE DATE	ANALYTICAL METHOD	DETECTION LIMIT FOR ANALYSIS
VOLATILE ORGANIC COMPOUNDS (cont'd)									
METHYL CHLORIDE 74-87-3					ACENAPHTHENE 83-92-9				
METHYLENE CHLORIDE 75-09-2					ACENAPHTHYLENE 208-96-8				
1,1,2-TRICHLOROETHANE 79-34-5					ANTHRACENE 120-12-7				
TETRACHLOROETHYLENE 127-18-4					BENZIDINE 92-87-5				
TOLUENE 108-88-3					1,2,3,4-TETRAHYDROANTRACENE 153-89-3				
1,1,1-TRICHLOROETHANE 71-55-6					ACENAPHTHYLENE 50-33-2				
1,1,2-TRICHLOROETHANE 79-00-5					3,4-DIFLUOROANTHRAcene 205-99-8				
TRICHLOROETHYLENE 79-01-6					PERFLUOROPOLYETHER 107-25-1				
VINYL CHLORIDE 75-01-4					BENZOPHENANTHRAcene 207-08-9				
ACID-EXTRACTABLE COMPOUNDS									
P- CHLORO-M-CRESOL 59-50-7					BIS (2-CHLOROETHOXY) METHANE / 111-91-1				
2-CHLOROPHENOL 95-57-8					BIS (2-CHLOROETHYL) ETHER/111-44-4				
2,4-DICHLOROPHENOL 120-83-2					BIS (2-CHLOROISOPROPYL) ETHER/108-60-1				
2,4,6-TRICHLOROPHENOL 135-67-8					BIS (2-ETHYLHEXYL) PHTHALATE / 117-81-7				
4-DINITRO-CRESOL 534-52-1					4-BROMOPHENYL PHENYL ETHER / 101-55-3				
2,4-DINITROPHENOL 51-28-5					BUTYL BENZYL PHTHALATE 85-83-7				
2-NITROPHENOL 88-75-5					2-CHLORONAPHTHRENE 91-58-7				
4-NITROPHENOL 100-02-7					4-CHLOROPHENYL PHENYL ETHER / 7005-72-3				
PENTACHLOROPHENOL 87-86-5					CHRYSENE 218-01-9				
PHENOL 108-95-2					D-N-BUTYL PHTHALATE 84-74-2				
2,4,6-TRICHLOROPHENOL 88-06-2					D-N-OCTYL PHTHALATE 117-84-0				
					DIBENZO(A,H)ANTHRACENE 59-70-9				
					1,2-DICHLOROBENZENE 95-50-1				
					1,3-DICHLOROBENZENE 541-73-1				

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A.8 b. Monitoring Information for Class I Sludge Management Facilities (cont'd).

INSTITUTE NAME AND IDENTIFY NUMBER	SAMPLE DATE	ANALYTICAL METHOD	CONCENTRATION mg/L or ug/L	CONCENTRATION mg/L or ug/L	INSTITUTE NAME AND IDENTIFY NUMBER	SAMPLE DATE	ANALYTICAL METHOD	CONCENTRATION mg/L or ug/L	CONCENTRATION mg/L or ug/L
BASE-NEUTRAL COMPOUNDS (cont'd)									
1,4-DICHLOROBENZENE 106-46-7					ALDRIN 309-00-2				
3,3-DICHLOROBENZIDINE 91-94-1					ALPHA-BHC 319-84-6				
DIETHYL PHTHALATE 84-66-2					BETA-BHC 319-85-7				
DIMETHYL PHTHALATE 131-11-3					DELTA-BHC 319-86-8				
2,4-DINITROTOLUENE 121-14-2					HEPTACHLOR 76-44-8				
2,6-DINITROTOLUENE 606-20-2					HEPTACHLOR EPOXIDE 1024-57-3				
1,2-DIPHENYLHYDRAZINE 122-66-7					PCB-1016 (AROCLOR 1016) 12674-11-2				
FLUORANTHENE 20844-0					PCB-1221 (AROCLOR 1221) 11104-28-2				
FLUORENE 86-73-7					PCB-1232 (AROCLOR 1232) 11141-16-5				
HEXACHLOROBENZENE 118-74-1					PCB-1242 (AROCLOR 1242) 53469-21-9				
HEXACHLOROBUTADIENE 87-68-3					PCB-1248 (AROCLOR 1248) 12672-29-6				
HEXACHLOROCYCLO- PENTADIENE / 77-47-4					PCB-1254 (AROCLOR 1254) 11097-69-1				
HEXACHLOROETHANE 67-72-1									
BENZENE, 1,2-DIHYDRO- 95-50-5									
BENZOPHENE 78-59-1									
NAPHTHALENE 91-20-3									
NITROBENZENE 98-95-3									
N-NITROSODI- N-PROPYLAMINE / 621-64-7									
N-NITROSODIMETHYLAMINE 62-75-9									
N-NITROSODIPHENYLAMINE 86-30-6									
PHENANTHRENE 85-01-8									
PYRENE 129-00-0									
1,2,4-TRICHLOROBENZENE 120-82-1									

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A.8.b. Monitoring Information for Class I Sludge Management Facilities (cont'd).

POLLUTANT NAME (USE REGULATORY NUMBER)	CONCENTRATION (mg/L or %)	SAMPLE DATE	ANALYTICAL METHOD	ANNUAL DETECTION LEVEL FOR ANALYSIS	POLLUTANT NAME (USE REGULATORY NUMBER)	CONCENTRATION (mg/L or %)	SAMPLE DATE	ANALYTICAL METHOD	ANNUAL DETECTION LEVEL FOR ANALYSIS
PESTICIDES (cont'd)									
PCB-1260									
11096-82-5									
TOXAPHENE									
8001-35-2									
OTHER									
2,3,7,8-TETRACHLORODIBENZO- P-DIOXIN (TCDD)/1746-01-6									

A.9. Certification. Read and submit the following certification statement with this application. Refer to the instructions to determine who is an officer for purposes of this certification.

Indicate which parts of Form 2S you have completed and are submitting:

Limited Background Information packet

Permit Application Information packet:

- Part A (General Information)
- Part B (Generation of Sewage Sludge or Preparation of a Material Derived from Sewage Sludge)
- Part C (Land Application of Bulk Sewage Sludge)
- Part D (Surface Disposal)
- Part E (Incineration)

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with the system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature of Officer: _____

Name of Officer:
(typed or printed) _____

Official Title of Officer: _____

Telephone Number: _____

Date Signed: _____

Upon request of the permitting authority, you must submit any other information necessary to assess sewage sludge use or disposal practices at your facility or identify appropriate permitting requirements.

Send this completed application to: _____

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B. GENERATION OF SEWAGE SLUDGE OR PREPARATION OF A MATERIAL DERIVED FROM SEWAGE SLUDGE

Complete this section if your facility generates sewage sludge or recycles a material from sewage sludge.

B.1. Amount Generated On Site.

Total dry metric tons per 365-day period generated at your facility: _____

B.2. Amount Received from Off Site. If your facility receives sewage sludge from another facility for treatment, use, or disposal, provide the following information for each facility from which sewage sludge is received. If you receive sewage sludge from more than one facility, attach additional pages as necessary.

- a. Facility name _____
- b. Contact person _____
- c. Phone number _____
- d. Mailing address _____
- e. Facility address (not P.O. Box) _____

f. Total dry metric tons per 365-day period received from this facility: _____

Describe, on this form or on another sheet of paper, any treatment processes known to occur at the off-site facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics:

B.3. Treatment Provided at Your Facility.

a. Which class of pathogen reduction is achieved for the sewage sludge at your facility? _____ Class A _____ Class B _____ Neither or unknown

b. Describe, on this form or another sheet of paper, any treatment processes used at your facility: _____

c. Which vector attraction reduction option is used for the sewage sludge at your facility? _____

- Option 1 (Minimum 38 percent reduction in volatile solids)
- Option 2 (Anaerobic process, with bench-scale demonstration)
- Option 3 (Aerobic process, with bench-scale demonstration)
- Option 4 (Specific oxygen uptake rate for aerobically digested sludge)
- Option 5 (Aerobic processes plus raised temperature)
- Option 6 (Raise pH to 12 and retain at 11.5)
- Option 7 (75 percent solids with no unstabilized solids)
- Option 8 (80 percent solids with unstabilized solids)
- None or unknown

d. Describe, on this form or another sheet of paper, any treatment processes used at your facility to reduce vector attraction properties of sewage sludge:

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B.5. Sale or Give-Away in a Bag or Other Container for Application to the Land.(cont'd)

b. Attach, with this application, a copy of all labels or notices that accompany the sewage sludge being sold or given away in a bag or other container for application to the land.

B.3. Treatment Provided at Your Facility. (cont'd)
e. Describe, on this form or another sheet of paper, any other sewage sludge treatment or blending activities not identified in (a) - (d) above:

B.6. Shipment Off Site for Treatment or Blending
a. Name of receiving facility: _____
b. Facility contact: _____
Name: _____
Title: _____
Phone: () _____

B.4. Preparation of Sewage Sludge Meeting Class A Pathogen Reduction, Class A Pathogen Requirements, and One of Vectors Attraction Reduction Options 1-3.
a. Total dry metric tons per 365-day period of sewage sludge subject to this section that is applied to the land: _____
b. Is sewage sludge subject to this section placed in bags or other containers for sale or give-away for application to the land?
Yes _____ No _____

B.5. Sale or Give-Away in a Bag or Other Container for Application to the Land.
a. Total dry metric tons per 365-day period of sewage sludge provided to receiving facility: _____
b. Does the receiving facility provide additional treatment to reduce pathogens in sewage sludge from your facility?
Yes _____ No _____

B.5. Sale or Give-Away in a Bag or Other Container for Application to the Land.
a. Total dry metric tons per 365-day period of sewage sludge placed in a bag or other container at your facility for sale or give-away for application to the land: _____

c. Facility mailing address:
Street or P.O. Box: _____
City or Town: _____ State: _____ Zip: _____

Which class of pathogen reduction is achieved for the sewage sludge at the receiving facility?
Class A _____ Class B _____ Neither or unknown _____

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B.6. Shipment Off Site for Treatment or Blending. (cont'd)

Describe, on this form or another sheet of paper, any treatment processes used at the receiving facility to reduce pathogens in sewage sludge:

f. Does the receiving facility provide additional treatment to reduce vector attraction characteristics of the sewage sludge? Yes _____ No _____

Which vector attraction reduction option is met for the sewage sludge at the receiving facility?

- Option 1 (Minimum 38 percent reduction in volatile solids)
- Option 2 (Aerobic process, with bench-scale demonstration)
- Option 3 (Aerobic process, with bench-scale demonstration)
- Option 4 (Specific oxygen uptake rate for aerobically digested sludge)
- Option 5 (Aerobic processes at a raised temperature)
- Option 6 (Fats and oils are retained at 11.5%)
- Option 7 (75 percent solids with no unstabilized solids)
- Option 8 (90 percent solids with unstabilized solids)
- None

Describe, on this form or another sheet of paper, any treatment processes used at the receiving facility to reduce vector attraction properties of sewage sludge:

g. Does the receiving facility provide any additional treatment or blending activities not identified in (e) or (f) above? Yes _____ No _____

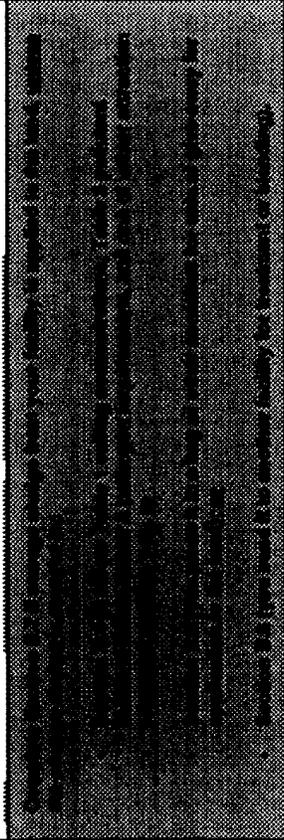
If yes, describe—on this form or another sheet of paper—the treatment or blending activities not identified in (e) or (f) above:

B.6. Shipment Off Site for Treatment or Blending. (cont'd)

h. If you answered yes to (e), (f), or (g), attach a copy of any information you provide the receiving facility to comply with the "notice and necessary information" requirement of 40 CFR 503.12(g).

i. Does the receiving facility place sewage sludge from your facility in a bag or other container for sale or give-away for application to the land? Yes _____ No _____

If yes, provide a copy of all labels or notices that accompany the product being sold or given away.



B.7. Land Application of Bulk Sewage Sludge.

a. Total dry metric tons per 365-day period of sewage sludge applied to all land application sites:

Do you identify all land application sites in Section C of this application?
Yes _____ No _____

If no, submit a copy of the land application plan with this application (see instructions).

c. Are any land application sites located in States other than the State where you generate sewage sludge or derive a material from sewage sludge?

Yes _____ No _____

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B.7. Land Application of Bulk Sewage Sludge. (cont'd)

If yes, describe—on this form or another sheet of paper—how you notify the permitting authority for the States where the land application sites are located. Provide a copy of the notification.

B.8. Surface Disposal.

a. Total dry metric tons of sewage sludge from your facility placed on all surface disposal sites per 365-day period: _____

b. Do you own or operate all surface disposal sites to which you send sewage sludge for disposal? Yes _____ No _____

If no, answer B.8.c - B.8.f for each surface disposal site that you do not own or operate. If you send sewage sludge to more than one such surface disposal site, attach additional pages as necessary.

c. Site name or number: _____

d. Site contact: Name: _____ Title: _____ Phone: () _____

e. Mailing address: _____

f. Total dry metric tons of sewage sludge from your facility placed on this surface disposal site per 365-day period: _____

B.9. Incineration.

a. Total dry metric tons of sewage sludge from your facility fired in all sewage sludge incinerators per 365-day period: _____

b. Do you own or operate all sewage sludge incinerators in which sewage sludge from your facility is fired? Yes _____ No _____

If no, complete B.9.c - B.9.f for each sewage sludge incinerator that you do not own or operate. If you send sewage sludge to more than one such sewage sludge incinerator, attach additional pages as necessary.

c. Incinerator name or number: _____

d. Incinerator contact: Name: _____ Title: _____ Phone: () _____

e. Incinerator mailing address: _____

Contact is incinerator: _____ Owner _____ Operator _____

f. Total dry metric tons of sewage sludge from your facility fired in this sewage sludge incinerator per 365-day period: _____

B.10. Disposal in a Municipal Solid Waste Landfill. Provide the following information for each municipal solid waste landfill on which sewage sludge from your facility is placed. If sewage sludge is placed on more than one municipal solid waste landfill, attach additional pages as necessary.

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B.10. Disposal in a Municipal Solid Waste Landfill. (cont'd)

B.10. Disposal in a Municipal Solid Waste Landfill. (cont'd)

f. List, on this form or an attachment, the numbers of all other Federal, State, and local permits that regulate the operation of this municipal solid waste landfill:
Permit Number: _____ Type of Permit: _____

a. Name of landfill: _____
b. Landfill contact: _____
Title: _____
Phone: () _____
Contact is: _____ Landfill owner _____ Landfill operator _____

c. Mailing address for municipal solid waste landfill.
Street or P.O. Box: _____ State: _____ Zip: _____
City or Town: _____

d. Location of municipal solid waste landfill.
Street or Route #: _____
County: _____ State: _____ Zip: _____
City or Town: _____

e. Total dry metric tons of sewage sludge from your facility placed in this municipal solid waste landfill per day period: _____

g. Submit, with this application, information to determine whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a municipal solid waste landfill (e.g., results of paint filter liquids test and TCLP test).

Does the municipal solid waste landfill comply with applicable criteria set forth in 40 CFR Part 268?
Yes _____ No _____

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C. LAND APPLICATION OF BULK SEWAGE SLUDGE

Consent to apply for a permit under this part of the National Pollutant Discharge Elimination Act (NPDES) is hereby given by the undersigned, who is authorized to execute this permit on behalf of the applicant, to the United States Environmental Protection Agency (EPA) and to the State of New York. The undersigned hereby certifies that the information furnished in this application is true and correct to the best of his or her knowledge and belief, and that the applicant is not aware of any other information that would make this application misleading or incomplete. The undersigned hereby certifies that the applicant is not aware of any other information that would make this application misleading or incomplete. The undersigned hereby certifies that the applicant is not aware of any other information that would make this application misleading or incomplete.

C.1. Identification of Land Application Site.

a. Site name or number: _____
 b. Site location. (Complete 1 or 2)
 1. Street or Route #: _____
 County: _____ State: _____ Zip: _____
 City or Town: _____
 2. Latitude: _____ Longitude: _____

C.2. Owner Information.

a. Are you the owner of this land application site? Yes _____ No _____
 b. If no, provide the following information about the owner:
 Name: _____
 Phone: _____
 Street or P.O. Box: _____
 City or Town: _____ State: _____ Zip: _____

C.3. Appplier Information.

a. Are you the person who applies, or who is responsible for application of, sewage sludges to this land application site? Yes _____ No _____
 b. If no, provide the following information for the person who applies:
 Name: _____
 Phone: _____
 Street or P.O. Box: _____
 City or Town: _____ State: _____ Zip: _____

C.4. Site Type. Identify the type of land application site from among the following:

Agricultural land _____ Reclamation site _____
 Forest _____
 Public contact site _____
 Other: _____

a. What type of crop or other vegetation is grown on this site?

 b. What is the nitrogen requirement for this crop or vegetation?

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C.6. Cumulative Loadings and Remaining Allotments. (cont'd)

C.6. Vector Attraction Reduction.

Are any vector attraction reduction requirements met when sewage sludge is applied to the land application site?

Yes No

If yes, answer C.6.a and C.6.b:

a. Indicate which vector attraction reduction option is met:

Option 9 (injection below land surface)

Option 10 (injection into soil within 6 feet)

b. Describe, on this form or another sheet of paper, any treatment procedures used at the land application site to reduce vector attraction properties of sewage sludge:

C.7. Ground-Water Monitoring.

Are any ground-water monitoring data available for this land application site?

Yes No

If yes, submit the ground-water monitoring data with this permit application. Also submit a written description of the well locations, approximate depth to ground water, and the ground-water monitoring procedures used to obtain these data.

C.8. Cumulative Loadings and Remaining Allotments.

a. Have you contacted the permitting authority in the State where the bulk sewage sludge subject to CPLRs will be applied, to ascertain whether bulk sewage sludge subject to CPLRs has been applied to this site on or since July 20, 1993?

Yes No

If no, sewage sludge subject to CPLRs may not be applied to this site.

If yes, provide the following information:

Permitting authority: _____

Contact person: _____

Phone: () _____

b. Based upon this inquiry, has bulk sewage sludge subject to CPLRs been applied to this site since July 20, 1993?

Yes No

If no, skip C.8.c.

If yes, answer question C.8.c.

c. Provide the following information for every facility other than yours that is sending, or has sent, bulk sewage sludge subject to CPLRs to this site since July 20, 1993. If more than one such facility sends sewage sludge to this site, attach additional pages as necessary.

Name of facility: _____

Facility contact Name: _____

Title: _____

Phone: _____

Facility mailing address: _____

Street or P.O. Box: _____

City or Town: _____

State: _____

Zip: _____

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Complete this form only if the sewage sludge applied to this site since July 20, 1993, has been subject to the following conditions: (CPLRs) in the State

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NPDES PERMIT NUMBER:

FACILITY NAME:

D. SURFACE DISPOSAL

Complete this section if you wish to operate a surface disposal unit.
Complete Sections D.1 - D.4 for each active sewage sludge unit.

D.1. Information on Active Sewage Sludge Units.

- a. Unit name or number: _____
- b. Unit location: _____
- c. Total dry metric tons of sewage sludge placed on the active sewage sludge unit per 365-day period: _____
- d. Total dry metric tons of sewage sludge placed on the active sewage sludge unit over the life of the unit: _____
- e. Does the active sewage sludge unit have a liner with a maximum hydraulic conductivity of 1×10^{-7} cm/sec? Yes _____ No _____
If yes, describe the liner (or attach a description): _____

D.1. Information on Active Sewage Sludge Units. (cont'd)

- h. Provide the following information:
Remaining capacity of active sewage sludge unit, in dry metric tons: _____
Anticipated closure date for active sewage sludge unit, if known: _____
Provide, with this application, a copy of any closure plan that has been developed for this active sewage sludge unit.
- i. Sewage Sludge from this facility is transported to other active sewage sludge units from any facilities other than your facility? Yes _____ No _____
If yes, provide the following information for each such facility. If sewage sludge is sent to this active sewage sludge unit from more than one such facility, attach additional pages as necessary.

a. Name of facility: _____
b. Facility contact: _____
Name: _____
Title: _____
Phone: () _____

c. Facility mailing address.
Street or P.O. Box: _____
City or Town: _____ State: _____ Zip: _____

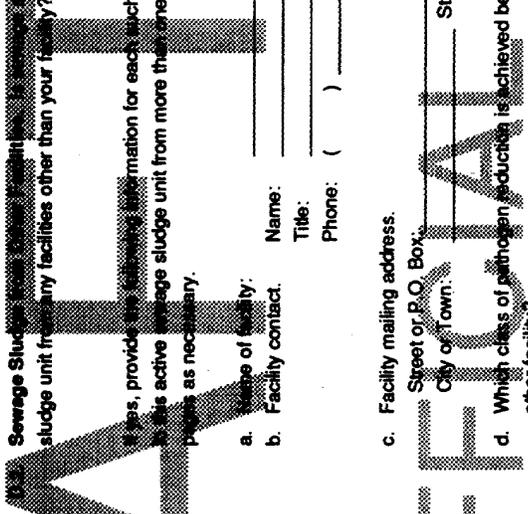
d. Which class of pathogen reduction is achieved before sewage sludge leaves the other facility?
Class A _____ Class B _____ None or unknown _____

e. Describe, on this form or another sheet of paper, any treatment processes used at the other facility to reduce pathogens in sewage sludge:

g. If you answered no to either D.1.e or D.1.f, answer the following question:

Is the boundary of the active sewage sludge unit less than 150 meters from the property line of the surface disposal site? Yes _____ No _____

If yes, provide the actual distance in meters: _____



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FACILITY NAME:

D.2. Sewage Sludge from Other Facilities (cont'd)

1. Which vector attraction reduction option is achieved before sewage sludge leaves the other facility?

- Option 1 (Minimum 38 percent reduction in volatile solids)
- Option 2 (Anaerobic process, with bench-scale demonstration)
- Option 3 (Aerobic process, with bench-scale demonstration)
- Option 4 (Specific oxygen uptake rate for aerobically digested sludge)
- Option 5 (Aerobic processes plus raised temperature)
- Option 6 (Raise pH to 12 and retain at 11.5)
- Option 7 (70 percent solids with no unstablized solids)
- Option 8 (90 percent solids with unstablized solids)
- None or unknown

g. Describe, on this form or another sheet of paper, any treatment processes used at the other facility to reduce vector attraction properties of sewage sludge.

h. Describe, on this form or another sheet of paper, any other sewage sludge treatment activities performed by the other facility that are not identified in (d) - (g) above:

D.3. Vector Attraction Reduction. (cont'd)

b. Describe, on this form or another sheet of paper, any treatment processes used at the active sewage sludge unit to reduce vector attraction properties of sewage sludge:

D.4. Ground-Water Monitoring.

a. Is ground-water monitoring currently conducted at this active sewage sludge unit, or are ground-water monitoring and sampling conducted at this active sewage sludge unit? Yes ___ No ___

If yes, provide a copy of available ground-water monitoring data. Also provide a written description of the well locations, the approximate depth to ground water, and the ground-water monitoring procedures used to obtain these data.

b. Has a ground-water monitoring program been prepared for this active sewage sludge unit? Yes ___ No ___

If yes, submit a copy of the ground-water monitoring program with this permit application.

c. Have you obtained a certification from a qualified ground-water scientist that the aquifer below the active sewage sludge unit has not been contaminated? Yes ___ No ___

If yes, submit a copy of the certification with this permit application.

D.5. Site-Specific Limits. Are you seeking site-specific pollutant limits for the sewage sludge placed on the active sewage sludge unit?

Yes ___ No ___

If yes, submit information to support the request for site-specific pollutant limits with this application.

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D.3. Vector Attraction Reduction.

a. Which vector attraction reduction option, if any, is met when sewage sludge is placed on this active sewage sludge unit?

- Option 9 (Injection below land surface)
- Option 10 (Incorporation into soil within 6 hours)
- Option 11 (Covering active sewage sludge unit daily)

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FACILITY NAME:

E. INCINERATION

Complete this section if you are incinerating sewage sludge. If you are not incinerating sewage sludge, you may skip this section. If you are not incinerating sewage sludge, you may skip this section. If you are not incinerating sewage sludge, you may skip this section.

E.1. Incinerator Identification.

- a. Incinerator name or number _____
- b. Incinerator location _____

E.2. Amount Fired. Dry weight tons per 365-day period of sewage sludge fired in the sewage sludge incinerator: _____

E.3. Beryllium NESHAP.

- a. Is the sewage sludge fired in this incinerator "beryllium-containing waste" as defined in the instructions? Yes _____ No _____

Submit, with this application, information, test data, and description of measures taken that demonstrate whether the sewage sludge incinerated is beryllium-containing waste, and will continue to remain as such.

- b. If the answer to (a) is yes, submit with this application a complete report of the latest beryllium emission rate testing and documentation of ongoing incinerator operating parameters indicating that the NESHAP emission rate limit for beryllium has been and will continue to be met.

E.4. Mercury NESHAP.

- a. How is compliance with the mercury NESHAP being demonstrated?
 _____ Stack testing _____ Sewage sludge sampling
 (if checked, complete E.4.b) (if checked, complete E.4.c)
- b. If stack testing is conducted, submit the following information with this application:

E.4. Mercury NESHAP. (cont'd)

- A complete report of stack testing and documentation of ongoing incinerator operating parameters indicating that the incinerator has met, and will continue to meet, the mercury NESHAP emission rate limit.

- Copies of mercury emission rate tests for the two most recent years in which testing was conducted.

If sewage sludge sampling is used to demonstrate compliance, submit a complete report of sewage sludge sampling and documentation of ongoing incinerator operating parameters indicating that the incinerator has met, and will continue to meet, the mercury NESHAP emission rate limit.

E.5. Dispersion Factor.

- a. Dispersion factor, in micrograms/cubic meter per gram/second: _____

- b. Name and type of dispersion model: _____

- c. Submit a copy of the modeling results and supporting documentation with this application.

E.6. Control Efficiency.

- a. Control efficiency, in hundredths, for the following pollutants:

Arsenic: _____
 Cadmium: _____
 Chromium: _____
 Lead: _____
 Nickel: _____

- b. Submit a copy of the results of performance testing and supporting documentation (including testing dates) with this application.

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FACILITY NAME:

E.7. Risk Specific Concentration for Chromium.

- a. Risk specific concentration (RSC) used for chromium, in micrograms per cubic meter: _____
- b. Which basis was used to determine the RSC?
 _____ Table 2 in 40 CFR 503.43
 _____ Equation 6 in 40 CFR 503.43 (site-specific determination)
- c. If Table 2 was used, identify the type of incinerator used as the basis:
 _____ Fluidized bed with wet scrubber
 _____ Fluidized bed with wet scrubber and wet electrostatic precipitator
 _____ Other types _____
 _____ Other types _____ wet scrubber _____ wet electrostatic precipitator
- d. If Equation 6 was used, provide the following:
 _____ Decimal fraction of hexavalent chromium concentration to total chromium concentration in stack exit gas:
 _____ Submit results of incinerator stack tests for hexavalent and total chromium concentrations, including date(s) of test, with this application.

E.8. Operational Standard for Total Hydrocarbons (THC) or Carbon Monoxide (CO).
If you monitor THC, complete the following:

- a. Raw value for THC concentration in stack emissions, in ppm: _____
- b. Moisture content in stack gas, in percent: _____
- c. Oxygen concentration in stack gas, in percent: _____
- d. Corrected value for THC concentration in stack emissions, in ppm: _____
- e. Submit, with this application, documentation used to derive raw THC concentration, moisture content, oxygen concentration, and corrected THC concentration.
If you monitor CO, complete the following:
 _____ a. Raw value for CO concentration in stack emissions, in ppm:
 _____ b. Moisture content in stack gas, in percent:
 _____ c. Oxygen concentration in stack gas, in percent:
 _____ d. Corrected value for CO concentration in stack emissions, in ppm:
 _____ e. Submit, with this application, documentation used to derive raw CO concentration, moisture content, oxygen concentration, and corrected CO concentration.

E.9. Operating Parameters.

- a. Incinerator type: _____
- b. Combustion temperature: _____
 Submit, with this application, supporting documentation such as testing date(s), a description of temperature measurement and data recording and handling systems, and a description of how such combustion temperature data have been averaged.
- c. Sewage sludge feed rate, in dry metric tons/day: _____
 Indicate whether value submitted is:
 _____ Average use
 _____ Maximum design
- Submit, with this application, supporting documentation describing how the feed rate was calculated: _____
- d. Incinerator stack height, in meters: _____
 Indicate whether value submitted is:
 _____ Actual stack height
 _____ Creditable stack height
- e. Submit, with this application, information documenting the operating parameters for the air pollution control device(s) used for this sewage sludge incinerator.

E.10. Monitoring Equipment. List the equipment in place to monitor the following parameters: _____

- a. Total hydrocarbons or carbon monoxide: _____
- b. Percent oxygen: _____
- c. Moisture content: _____
- d. Combustion temperature: _____
- e. Other: _____

E.11. Air Pollution Control Equipment. Submit, with this application, a list of all air pollution control equipment used with this sewage sludge incinerator.

Instructions for Completing Form 2S

Application for a Sewage Sludge Permit

Paperwork Reduction Act Notice: The public reporting and recordkeeping burden for this collection of information is estimated to average 11.6 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., S.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, Attention: Desk Officer for EPA. Include the OMB control number in any correspondence. Do not send the completed application form to these addresses.

Overview

This application form collects information from persons that are required to apply for a sewage sludge use or disposal permit.

Who Must Submit Application Information?

The following persons are "treatment works treating domestic sewage" that are required to submit sewage sludge permit application information:

- Any person who generates sewage sludge that is ultimately regulated by Part 503 (i.e., it is applied to the land, placed on a surface disposal site, fired in a sewage sludge incinerator, or placed in a municipal solid waste landfill unit);
- Any person who derives material from, or otherwise changes the quality of, sewage sludge (e.g., an intermediate treatment facility such as a composting facility, or a facility that processes sewage sludge for sale or give away in a bag or other container for application to the land), if that sewage sludge is used or disposed in a manner subject to Part 503;
- Any person who owns or operates a sewage sludge surface disposal site;

- Any person who fires sewage sludge in a sewage sludge incinerator; and

- Any other person required by the permitting authority to submit permit application information.

For purposes of this form, *you* refers to the applicant. *This facility* and *your facility* refer to the facility for which application information is being submitted.

Facility should be interpreted to include activities potentially subject to regulation under the sewage sludge program—e.g., areas of sewage sludge treatment, storage, land application, surface disposal, or incineration, even if such activities do not occur at the same location.

Which Parts of The Form Apply?

Form 2S is presented in a modular format, enabling information collection to be tailored to your facility's sewage sludge generation, treatment, use, or disposal practices. The form is divided into two main parts:

- *Part 1* is limited screening information that must be submitted by "sludge-only" (non-NPDES) facilities that are not applying for site-specific pollutant limits and have not been directed to submit a full permit application at this time.
- *Part 2* must be submitted by facilities that are submitting a full permit application at this time. These include the following:

- Facilities with a currently effective NPDES permit.
- Facilities that are required to have, or are requesting, site-specific pollutant limits, including "sludge-only" facilities that are applying for site-specific pollutant limits. (Note: all sewage sludge incinerators are required to have site-specific pollutant limits.)
- Facilities that have been directed by the permitting authority to apply for a permit at this time.

Complete either Part 1 or Part 2, but not both (unless otherwise instructed by the permitting authority).

Part 2 is divided into the following sections:

- *Section A* is general information to be provided by all applicants that fill out Part 2.
- *Section B* must be completed by any facility that generates sewage sludge or derives a material from sewage sludge.
- *Section C* must be completed by any facility that applies bulk sewage sludge to the land, or whose bulk sewage sludge is applied to the land. (Most applicants that provide this information will also submit Section B

information, because it is unlikely that EPA would permit a land applier who does not generate or change the quality of sewage sludge.)

- *Section D* must be completed by the owner/operator of a surface disposal site.

- *Section E* must be completed by the owner/operator of a sewage sludge incinerator.

You need only submit the Sections of Part 2 that apply.

Part 1: Limited Background Information

Part 1 requests a limited amount of information from "sludge-only" facilities (facilities without a currently-effective NPDES permit) that are not requesting site-specific permit limits and are not directed by the permitting authority to submit a full permit application at this time. This limited screening information must be submitted as expeditiously as possible, but no later than 180 days after publication of an applicable use or disposal standard. It is intended to allow the permitting authority to identify these facilities, track sewage sludge use and disposal, and establish priorities for permitting.

1. Facility Information.

a. Provide the facility's official or legal name. Do not use a colloquial name.

b. Provide the complete mailing address of the office where correspondence should be sent. This may differ from the facility location given in Question 1.d.

c. Provide the name, title, and work telephone number of a person who is thoroughly familiar with the operation of the facility and with the facts reported in this application, and who can be contacted by the permitting authority if necessary.

d. Provide the physical location of the facility. If the facility lacks a street address or route number, provide the most accurate alternative geographic information (e.g., township and range, section or quarter section number, or nearby highway intersection).

e. Indicate the type of facility.

A *publicly owned treatment works* (POTW) is any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a State or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

A *privately owned treatment works* is any device or system which is (a) used to treat wastes from any facility whose

operator is not the operator of the treatment works and (b) not a POTW or federally owned treatment works.

A *federally owned treatment works* is a facility that is owned and operated by a department, agency, or instrumentality of the Federal Government that treats wastewater, a majority of which is domestic sewage, prior to discharge in accordance with a permit issued under section 402 of the Federal Water Pollution Control Act.

A *blending or treatment operation* means any sewage sludge or wastewater treatment device or system, regardless of ownership (including Federal facilities), used in the storage, treatment, recycling, and reclamation of domestic sewage, including land dedicated for the disposal of sewage sludge. For purposes of this form, such devices or systems include blending or treatment operations that derive material from sewage sludge but do not generate sewage sludge.

A *surface disposal site* is an area of land that contains one or more active sewage sludge units.

An *active sewage sludge unit* is land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include waters of the United States, as defined in 40 CFR 122.2.

A *sewage sludge incinerator* is an enclosed device in which only sewage sludge and auxiliary fuel are fired.

2. Applicant Information.

a. If someone other than the facility contact person is submitting this application, provide the name of that person's organization.

b. Provide the complete mailing address of the applicant's organization.

c. Provide the name and work telephone number of a person who is thoroughly familiar with the operation of the facility and with the facts reported in this application, and who can be contacted by the permitting authority if necessary.

d. Indicate whether this applicant is the owner or operator (or both) of the facility. If it is neither, describe the relationship of the applicant to the facility.

e. Indicate whether you want correspondence regarding this application directed to the applicant or to the facility address provided in question 1.

3. Sewage Sludge Amount. List, on a dry weight basis, the total dry metric tons of sewage sludge per latest 365-day period handled at this facility.

Dry weight basis means calculated on the basis of having been dried at 105 degrees C until reaching a constant

weight (i.e., essentially 100 percent solids content).

a. The *amount generated* is, for purposes of this application, the amount of sewage sludge generated during the treatment of domestic sewage at the facility.

b. The *amount received from off site* is any additional amount of sewage sludge handled at your facility that is not generated during the treatment of domestic sewage at your facility.

c. The *amount treated or blended on site* is the amount of sewage sludge generated on site, plus the amount received from off site, that undergoes treatment on site. *Treatment* is the preparation of sewage sludge for final use or disposal. Treatment, for purposes of this form, includes the following:

- Thickening and stabilization;
- Processing (e.g., composting) for purposes of pathogen reduction and vector attraction reduction; and
- Blending with a bulking agent or with sewage sludge from another facility.

Treatment does not include storage of sewage sludge.

d. The *amount sold or given away in a bag or other container for application to the land* is the amount placed in a bag or other container at your facility.

An *other container* is either an open or closed receptacle, including but not limited to, a bucket, box, carton, vehicle, or trailer with a load capacity of one metric ton or less.

e. The *amount of bulk sewage sludge shipped off site for treatment or blending* is the amount of sewage sludge that is shipped to another facility in bulk form (i.e., not in a bag or other container), where the other facility derives a material from the sewage sludge (i.e., it is a "person who prepares").

This question does not cover sewage sludge sent directly to a land application site, surface disposal site, municipal solid waste landfill, or sewage sludge incinerator.

f. The *amount applied to the land in bulk form* is the amount of bulk sewage sludge from your facility that is sent directly to a land application site from your facility. It does not cover sewage sludge placed in a bag or other container, nor does it cover sewage sludge shipped off site for treatment or for sale or give-away in a bag or other container.

g. The *amount placed on a surface disposal site* is the amount of sewage sludge from your facility that is placed on a surface disposal site, regardless of whether you own or operate the surface disposal site.

h. The *amount fired in a sewage sludge incinerator* is the amount of sewage sludge from your facility that is fired in a sewage sludge incinerator, regardless of whether you own or operate the sewage sludge incinerator.

i. The *amount sent to a municipal solid waste landfill* (MSWLF) is the amount of sewage sludge from your facility that is sent directly to a MSWLF, which is a discrete area of land or an excavation that receives household waste and other solid wastes.

j. The *amount used or disposed by another practice* is the amount of sewage sludge generated on site or received from off site that is not covered in Questions 3.d–3.i above.

4. Pollutant Concentrations. Provide available data on the concentrations of the listed pollutants in the sewage sludge from this facility. If concentration data are available for pollutants not on this list, provide those data as well. Provide up to three data points taken at least one month apart during the last two years. If data from the last two years are unavailable, provide the most recent data.

Express pollutant concentrations as dry weight concentrations.

You may use a separate attachment in addition to, or instead of, the table provided.

You need not perform additional pollutant monitoring to comply with this requirement; rather, only available data are requested.

Calculations on a *dry weight basis* are based on sewage sludge having been dried at 105 degrees Celsius until reaching a constant weight (i.e., essentially 100 percent solids content).

The Part 503 sewage sludge use or disposal regulation requires the use of Test Method SW-846 (in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," Second and Third Editions) to analyze samples of sewage sludge for compliance with Part 503. SW-846 is recommended, but not required, for purposes of providing sewage sludge quality information in the permit application.

5. Treatment Provided at Your Facility. Provide the following information regarding sewage sludge treatment on site. This question does not request information on sewage sludge treatment at an off-site use or disposal facility.

a. Indicate the class of pathogen reduction (Class A or Class B) that is achieved at your facility. You may select "neither or unknown" only if sewage sludge is placed on an active sewage sludge unit that is covered with soil or other material at the end of each operating day, sent to another facility

for additional treatment, fired in a sewage sludge incinerator, or placed on a municipal solid waste landfill unit.

Options for meeting Class A pathogen reduction are listed at § 503.32(a). Options for meeting Class B pathogen reduction are listed at § 503.32(b).

b. Provide a written description of any treatment processes used to reduce pathogens in sewage sludge, including an indication of how the treatment fulfills one of the options for meeting Class A or Class B pathogen reduction. You may attach existing documentation (e.g., technical or process specifications) to meet this requirement.

c. Indicate whether any of the vector attraction reduction options in § 503.33(b) (1)–(11) are met before sewage sludge leaves the facility. Options 1–8 are typically met at the point where sewage sludge is generated or where a material is derived from sewage sludge, and Options 9–11 are typically met at the point of use or disposal.

You may select “none or unknown” only in the following cases:

- If sewage sludge is fired in a sewage sludge incinerator; or

- If sewage sludge is placed on a municipal solid waste landfill unit.

Land application: Sewage sludge applied to agricultural land, a forest, a public contact site, or a reclamation site must meet one of the vector attraction reduction options 1–10, which are defined at § 503.33(b) (1)–(10), respectively. Sewage sludge applied to a lawn or home garden, or placed in a bag or other container for sale or give-away for application to the land, must meet any of options 1–8, defined at § 503.33(b) (1)–(8), respectively.

Surface disposal: Sewage sludge placed on an active sewage sludge unit must meet one of vector attraction reduction options 1–11, which are defined at § 503.33(b) (1)–(11), respectively.

d. Provide a written description of any treatment processes used to reduce vector attraction characteristics of sewage sludge, including an indication of how the treatment fulfills one of options 1–11 for vector attraction reduction. You may attach existing documentation (e.g., technical or process specifications) to meet this requirement.

6. Sewage Sludge Sent to Other Facilities. If sewage sludge from your facility is sent to an off-site facility for treatment, distribution, use, or disposal, provide the information requested below for each receiving facility. If sewage sludge is sent to more than one off-site facility, attach additional pages if necessary.

For purposes of this form, an *off-site facility* is a facility or site that is located on land physically separate from the land used in connection with your facility. “Off site” may include facilities or sites that you own if they are not located on the same property or on adjacent property.

a. Provide the facility’s official or legal name. Do not use a colloquial name.

b. Provide the name, title, and work telephone number of a person who is thoroughly familiar with the operation of the facility receiving the sewage sludge, and who can be contacted by the permitting authority if necessary.

c. Provide the complete mailing address at the off-site facility where correspondence should be sent.

d. Indicate which activities the receiving facility performs on the sewage sludge from your facility.

7. Use and Disposal Sites. If sewage sludge is sent directly from your facility to a use or disposal site (i.e., it is not sent to another facility), provide the following information for each such site (attach additional pages if necessary):

a. Provide the site name and/or number. The name and/or number is any designation commonly used to refer to the site. If the site has been previously designated in another permit, use that designation.

b. Provide the name, title, and work telephone number of a person who is thoroughly familiar with the operation of the use or disposal site, and who can be contacted by the permitting authority if necessary.

c. Answer either question 1 or question 2.

1. Provide the physical location (street address) of the site. If the site lacks a street address or route number, provide the most accurate alternative geographic information (e.g., township and range, section or quarter section number, nearby highway intersection).

2. Provide the latitude and longitude of the center of the site. If a map was used to obtain latitude and longitude, provide map datum (e.g., NAD 27, NAD 83) and map scale (e.g., 1:24000, 1:100000).

d. The *site type* is the intended end use of the land. Applicable sewage sludge use and disposal standards, and thus permit conditions, differ according to type of site.

Agricultural land is land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land, which is open land with indigenous vegetation, and pasture, which is land on which animals feed directly on crops such as grasses, grain stubble, or stover.

Forest is a tract of land thick with trees and underbrush.

A *public contact site* is land with a high potential for contact by the public. Public contact sites include public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

A *reclamation site* is land that has been drastically disturbed by strip mining, fires, construction, etc. As part of the reclamation process, sewage sludge is applied for its nutrient and soil conditioning properties to help stabilize and revegetate the land.

For purposes of this form, a *lawn or home garden* is privately-owned land on which crops or other vegetation are grown for private, non-commercial use and on which use by the general public does not occur.

A *surface disposal site* is an area of land that contains one or more active sewage sludge units. An *active sewage sludge unit* is land on which only sewage sludge is placed for final disposal.

A *sewage sludge incinerator* is an enclosed device in which sewage sludge and auxiliary fuel are fired.

A *municipal solid waste landfill* is a discrete area of land or an excavation that receives household waste and other solid wastes.

8. Certification. All permit applications must be signed and certified.

An application submitted by a *municipality, State, Federal, or other public agency* must be signed by either a principal executive officer or ranking elected official. A principal executive officer of a Federal agency includes: (1) The chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

An application submitted by a *corporation* must be signed by a responsible corporate officer. A responsible corporate officer means: (1) A president, secretary, treasurer, or vice president in charge of a principal business function, or any other person who performs similar policy- or decision-making functions; or (2) the manager of manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

An application submitted by a *partnership or sole proprietorship* must be signed by a general partner or the proprietor, respectively.

Part 2: Permit Application Information as well as "sludge-only" facilities that sections of Part 2 cover your facility's
 Part 2 of this form pertains to facilities are applying for site-specific pollutant sewage sludge use or disposal practices.
 that are submitting a full permit limits. Table 1, below, summarizes which
 application at this time. This includes Review items 1-5 of the Application sections cover which activities.
 facilities applying for an NPDES permit Overview section to determine which

TABLE 1.—GUIDELINES FOR COMPLETING PART 2

Activity(ies) performed	A	B	C	D	E
Generates sewage sludge or derives material from sewage sludge	✓	✓ (B.1-B.3)			
That meets ceiling concentrations in Table 1 of 40 CFR 503.13, pollutant concentrations in Table 3 of §503.13, Class A pathogen requirements in §503.32, and one of the eight vector attraction reduction options in §503.33 (b) (1)-(8)	✓	✓ (B.4)			
That is sold or given away in bag or other container for application to the land	✓	✓ (B.5)			
That is shipped off site for treatment or blending	✓	✓ (B.6)			
That is applied to the land in bulk form	✓	✓ (B.7)	✓		
That is placed on a surface disposal site	✓	✓ (B.8)			
That is fired in a sewage sludge incinerator	✓	✓ (B.9)			
That is sent to a municipal solid waste landfill	✓	✓ (B.10)			
Applies bulk sewage sludge to land	✓		✓		
Owens or operates a surface disposal site	✓			✓	
Fires sewage sludge in a sewage sludge incinerator	✓				✓

Section A: General Information

All applicants must complete Section A, which requests general information about the facility.

A.1. Facility Information.

a. Provide the facility's official or legal name. Do not use a colloquial name.

b. Provide the complete mailing address of the office where correspondence should be sent. This may differ from the facility location given in Question 1.d.

c. Provide the name, title, and work telephone number of a person who is thoroughly familiar with the operation of the facility and with the facts reported in this application, and who can be contacted by the permitting authority if necessary.

d. Provide the physical location (street address) of the facility. If the facility lacks a street address or route number, provide the most accurate alternative geographic information (e.g., township and range, section or quarter section number, nearby highway intersection).

e. Provide the latitude and longitude of the facility. This information is required by EPA's Locational Data Policy. If a map was used to obtain latitude and longitude, provide map datum (e.g., NAD 27, NAD 83) and map scale (e.g., 1:24000, 1:100000).

f. Indicate whether the facility is a Class I sludge management facility. A Class I sludge management facility is either:

- Any POTW required to have an approved pretreatment program under 40 CFR 403.8(a), including any POTW

located in a State assuming local pretreatment program responsibilities pursuant to 40 CFR 403.10(e); or

- Any treatment works treating domestic sewage, as defined in 40 CFR 122.2, classified as a Class I sludge management facility by the EPA Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for its sewage sludge use or disposal practices to adversely affect public health and the environment.

If your facility is a Class I sludge management facility, you must perform a toxicity characteristic leaching procedure (TCLP) on this facility's sewage sludge. Submit the results (pass or fail) of all TCLP tests you have performed during the past five years that you have not already submitted to the permitting authority.

g. Provide the facility's design influent flow rate. "Design influent flow rate" means the average flow the treatment works was designed to treat. Enter the design influent flow rate in million gallons per day (mgd), to two decimal places (e.g., 3.12 mgd translates to three million one hundred twenty thousand gallons per day).

h. For all areas served by the treatment works (municipalities and unincorporated service areas), enter the best estimate of the actual population served at the time of application. If another treatment works discharges into this treatment works, provide on a separate attachment the name of the other treatment works and the actual population it serves (it is not necessary

to list the communities served by the other treatment works).

- i. Indicate the type of facility.

A publicly owned treatment works (POTW) is any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a State or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

A privately owned treatment works is any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a POTW or federally owned treatment works.

A federally owned treatment works is a facility that is owned and operated by a department, agency, or instrumentality of the Federal government that treats wastewater, a majority of which is domestic sewage, prior to discharge in accordance with a permit issued under section 402 of the Federal Water Pollution Control Act.

A blending or treatment operation means any sewage sludge or wastewater treatment device or system, regardless of ownership (including Federal facilities), used in the storage, treatment, recycling, and reclamation of domestic sewage, including land dedicated for the disposal of sewage sludge. For purposes of this form, such devices or systems include blending or treatment operations that derive material from sewage sludge but do not generate sewage sludge.

A *surface disposal site* is an area of land that contains one or more active sewage sludge units. An *active sewage sludge unit* is land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include waters of the United States, as defined in 40 CFR 122.2.

A *sewage sludge incinerator* is an enclosed device in which sewage sludge and auxiliary fuel are fired.

A.2. Applicant Information.

a. If someone other than the facility contact person is submitting this application, provide the name of that person's organization.

b. Provide the complete mailing address of the applicant's organization.

c. Provide the name and work telephone number of a person who is thoroughly familiar with the operation of the facility and with the facts reported in this application, and who can be contacted by the permitting authority if necessary.

d. Indicate whether this applicant is the owner or operator (or both) of the facility. If it is neither, describe the relationship of the applicant to the facility.

e. Indicate whether you want correspondence regarding this application directed to the applicant or to the facility address provided in question 1.

A.3. Permit Information. Provide the facility's NPDES permit number, if any. Also provide the number and type of any relevant Federal, State, or local environmental permits or construction approvals received or applied for, including but not limited to permits issued under any of the following programs:

- Hazardous Waste Management program under RCRA;
- UIC program under SDWA;
- Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
- Nonattainment program under the Clean Air Act;
- National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
- Ocean dumping permits under the Marine Protection, Research, and Sanctuaries Act; or
- Dredge or fill permits under Section 404 of CWA.

A.4. Federal Indian Reservation. Identify any generation, treatment, storage, application to land, or disposal of sewage sludge that occurs on a Federal Indian Reservation.

A.5. Topographic Map. Provide a topographic map or maps (or other

appropriate map(s) if a topographic map is unavailable) that shows the items identified below, including the areas one mile beyond the property boundaries of the facility.

a. Location of all sewage sludge management facilities, including land application sites and locations where sewage sludge is generated, treated, or disposed;

b. Location of all water bodies within one mile beyond the facility's property boundaries; and

c. Location of all wells used for drinking water listed in public records or otherwise known to you within 1/4 mile of the facility property boundaries.

On each map, include the map scale, a meridian arrow showing north, and latitude and longitude at the nearest whole second. Use a 7 1/2-minute series map published by the U.S. Geological Survey (USGS), which may be obtained through the USGS Earth Science Information Center (ESIC) listed below. If a 7 1/2-minute series map has not been published for your facility site, then you may use a 15-minute series map from the U.S. Geological Survey. If neither a 7 1/2-minute nor 15-minute series map has been published for your facility site, use a plat map or other appropriate map, including all the requested information; in this case, briefly describe land uses in the map area (e.g., residential, commercial). If you have previously prepared a map that includes these three items, that map may be submitted to fulfill this requirement if it is still accurate.

Maps may be purchased at local dealers (listed in your local yellow pages) or purchased over the counter at the following USGS Earth Science Information Centers (ESIC):

- Anchorage-ESIC, 4230 University Dr., Rm. 101, Anchorage, AK 99508-4664, (907)786-7011
- Lakewood-ESIC, Box 25046, Bldg. 25, Rm. 1813, Denver Federal Center, MS 504, Denver, CO 80225-0046, (303)236-5829
- Lakewood Open Files-ESIC, Box 25286, Bldg. 810, Denver Federal Center, Denver, CO
- Menlo Park-ESIC, Bldg. 3, Rm. 3128, MS 532, 345 Middlefield Rd., Menlo Park, CA 94025-3591, (415)329-4309
- Reston-ESIC, 507 National Center, Reston, VA 22092, (703)648-6045
- Rolla-ESIC, 1400 Independence Rd., MS 231, Rolla, MO 65401-2602, (314)341-0851
- Salt Lake City-ESIC, 2222 West 2300 South, Salt Lake City, UT 84119, (801)975-3742
- Sioux Falls-ESIC, EROS Data Center, Sioux Falls, SD 57198-0001, (605)594-6151
- Spokane-ESIC, U.S. Post Office Bldg., Rm. 135, 904 W. Riverside Ave., Spokane, WA 99201-1088, (509)353-2524
- Stennis Space Center-ESIC, Bldg. 3101, Stennis Space Center, MS 39529, (601)688-3541

Washington, D.C.-ESIC, U.S. Dept. of Interior, 1849 C St., NW, Rm. 2650, Washington, D.C. 20240, (202)208-4047

All maps should be either on paper or other material appropriate for reproduction. If possible, all sheets should be approximately letter size with margins suitable for filing and binding. As few sheets as necessary should be used to clearly show what is involved. Each sheet should be labeled with your facility's name, permit number, location (city, county, or town), date of drawing, and designation of the number of sheets of each diagram as "page _____ of _____".

A.6. Line Drawing. Attach to this form a line drawing, simple flow diagram, or narrative description that identifies all sewage sludge processes employed during the permit term, including the information requested on the application form.

A.7. Contractor Information.

If a contractor carries out any operational or maintenance aspects associated with this facility, provide the name, mailing address, and telephone of each such contractor. Also provide a description of the activities performed by the contractor. Attach additional pages if necessary.

A.8. Pollutant Concentrations.

- All facilities must complete *Section A.8.a.* (Part 503 Metals, Nutrients, and percent solids).
- Complete *Section A.8.b.* if this facility is a Class I sludge management facility.

A *Class I sludge management facility* is either:

- Any POTW required to have an approved pretreatment program under 40 CFR 403.8(a), including any POTW located in a State assuming local pretreatment program responsibilities pursuant to 40 CFR 403.10(e)); or
- Any treatment works treating domestic sewage, as defined in 40 CFR 122.2, classified as a Class I sludge management facility by the EPA Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for its sewage sludge use or disposal practices to adversely affect public health and the environment.

Provide pollutant concentration data as follows:

- Submit data for each of the pollutants listed in the appropriate section.
- For the listed pollutants, data may not be more than two years old. If existing data are not available for a pollutant, you must obtain and analyze at least one sample for that pollutant.

- In addition, if you have any available concentration data for pollutants *not* listed in the section you are completing, provide those data as well. If data for such additional pollutants are not available from the last two years, provide the most recent data.

- Express pollutant concentrations as dry weight concentrations.

- You may use a separate attachment in addition to or instead of the table provided.

Calculations on a *dry weight basis* are based on sewage sludge having been dried at 105 degrees Celsius until reaching a constant weight (i.e., essentially 100 percent solids content).

The Part 503 sewage sludge use or disposal regulation requires the use of Test Method SW-846 (in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," Second and Third Editions) to analyze samples of sewage sludge for compliance with Part 503. SW-846 is recommended, but not required, for purposes of providing sewage sludge quality information in the permit application.

A.9. Certification. All permit applications must be signed and certified. Also indicate in the boxes provided, which sections of Form 2S you are submitting with this application.

An application submitted by a *municipality, State, Federal, or other public agency* must be signed by either a principal executive officer or ranking elected official. A principal executive officer of a Federal agency includes: (1) The chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

An application submitted by a *corporation* must be signed by a responsible corporate officer. A responsible corporate officer means: (1) A president, secretary, treasurer, or vice president in charge of a principal business function, or any other person who performs similar policy- or decision-making functions; or (2) the manager of manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

An application submitted by a *partnership or sole proprietorship* must be signed by a general partner or the proprietor, respectively.

Section B: Generation of Sewage Sludge or Preparation of a Material Derived From Sewage Sludge

Complete this section if you are a "person who prepares sewage sludge." A *person who prepares sewage sludge* is a person who generates sewage sludge during the treatment of domestic sewage in a treatment works or who derives a material from sewage sludge. This section, therefore, pertains to any POTW or other treatment works that generates sewage sludge, as well as to any facility that derives a material from sewage sludge (e.g., it composts sewage sludge or blends sewage sludge with another material). Simply distributing sewage sludge or placing it in a bag or other container for sale or give-away for application to the land is not considered "deriving a material" from sewage sludge (because it does not change sludge quality), and thus a facility that only distributes or bags a sewage sludge would not be automatically required to provide the information in this section.

B.1. Amount Generated On Site. Provide the total dry metric tons per 365-day period of sewage sludge that is generated at your facility. Report only the amount of sewage sludge that is generated during treatment of domestic sewage in a treatment works, not the amount of material that is derived from sewage sludge.

B.2. Amount Received from Off Site. Provide the following information if your facility receives any sewage sludge from an off-site facility for further treatment (including blending), use, or disposal at your facility. If your facility receives sewage sludge from more than one off-site facility, provide this information separately for each such facility. Attach additional pages as necessary.

For purposes of this form, an *off-site* facility is a facility or site that is located on land physically separate from the land used in connection with your facility. "Off site" may include facilities or sites that you own if they are not located on the same property or on adjacent property.

a. Provide the official or legal name of the off-site facility. Do not use a colloquial name.

b. Provide the name and work telephone number of a person who is thoroughly familiar with the operation of the off-site facility and with the facts reported in this section, and who can be contacted by the permitting authority if necessary.

c. Provide the complete mailing address at the off-site facility where correspondence should be sent.

d. Provide the physical location (street address) of the off-site facility. If

the facility lacks a street address or route number, provide the most accurate alternative geographic information (e.g., township and range, section or quarter section number, nearby highway intersection).

The off-site facility providing the sewage sludge is, by definition, also a "person who prepares sewage sludge". Both you and the off-site facility are required to apply for a permit and are required to ensure that applicable Part 503 requirements are met.

e. Provide the total dry metric tons per 365-day period received from the off-site facility.

f. Describe any treatment processes occurring at the off-site facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics. "Treatment" does not include dewatering.

B.3. Treatment Provided at Your Facility. Provide the following information regarding sewage sludge treatment at your facility. This question does *not* request information on sewage sludge treatment at an off-site use or disposal facility.

a. Indicate the class of pathogen reduction (Class A or Class B) that is achieved before sewage sludge leaves the facility. You may select "neither or unknown" only if sewage sludge is placed on an active sewage sludge unit that is covered with soil or other material at the end of each operating day, sent to another facility for additional treatment, fired in a sewage sludge incinerator, or placed on a municipal solid waste landfill unit.

Options for meeting Class A pathogen reduction are listed at § 503.32(a). Options for meeting Class B pathogen reduction are listed at § 503.32(b).

b. Provide a written description of any treatment processes used to reduce pathogens in sewage sludge, including an indication of how the treatment fulfills one of the options for meeting Class A or Class B pathogen reduction. You may attach existing documentation (e.g., technical or process specifications) to meet this requirement.

c. Indicate whether any of vector attraction reduction options 1-8 are met before sewage sludge leaves the facility. Options 1-8 are published at § 503.33(b) (1)-(8), and typically are met at the point of sewage sludge generation.

Options 9, 10, and 11 (published at § 503.33(b) (9)-(11), respectively) are also available, but are typically met at the point of use or disposal and are covered elsewhere in this form.

You may select "none or unknown" only in the following cases:

- If sewage sludge is sent to another facility for additional treatment;

- If option 9 (injection below land surface) or option 10 (incorporation into soil within six hours) is met at a *land application site*;

- If option 9 (injection below land surface), option 10 (incorporation into soil within six hours), or option 11 (daily cover) is met at an active sewage sludge unit at a surface disposal site;

- If sewage sludge is fired in a sewage sludge incinerator; or

- If sewage sludge is placed on a municipal solid waste landfill unit.

Land application: Sewage sludge applied to agricultural land, a forest, a public contact site, or a reclamation site must meet one of the vector attraction reduction options 1–10, which are defined at § 503.33(b) (1)–(10), respectively. Sewage sludge applied to a lawn or home garden, or placed in a bag or other container for sale or give-away for application to the land, must meet any of options 1–8, defined at § 503.33(b) (1)–(8), respectively.

Surface disposal: Sewage sludge placed on an active sewage sludge unit must meet one of vector attraction reduction options 1–11, which are defined at § 503.33(b) (1)–(11), respectively.

d. Provide a written description of any treatment processes used to reduce vector attraction characteristics of sewage sludge, including an indication of how the treatment fulfills one of options 1–8 for vector attraction reduction. You may attach existing documentation (e.g., technical or process specifications) to meet this requirement.

e. Provide a written description of any other treatment or blending activities not described in B.3.b or B.3.d above. “Other treatment” does not include dewatering or placement of sewage sludge in a bag or other container for sale or give-away for application to land. You may attach existing documentation (e.g., technical or process specifications) to meet this requirement.

B.4. Preparation of Sewage Sludge Meeting Ceiling Concentrations, Pollutant Concentrations, Class A Pathogen Requirements, and One of Vector Attraction Reduction Options 1–8.

Complete this section if sewage sludge from this facility meets *all* of the following criteria:

- The ceiling concentrations in Table 1 of § 503.13(b)(1) and the pollutant concentrations in Table 3 of § 503.13(b)(3);

- The Class A pathogen reduction requirements in § 503.32(a); *and*

- One of the vector attraction reduction options in § 503.33(b) (1)–(8).

Sewage sludge meeting *all* of these criteria is exempt from the general requirements of § 503.12 and the management practices of § 503.14, and thus fewer permitting and permit application requirements typically pertain to facilities generating such sludge. For this reason, if you are eligible to complete Section B.4, you may skip Sections B.5–B.7 unless specifically required to complete any of them by the permitting authority.

a. Provide the total dry metric tons per 365-day period of sewage sludge that is applied to the land and that meets the Table 1 ceiling concentrations, the Table 3 pollutant concentrations, Class A pathogen requirements, and one of vector attraction reduction options 1–8.

b. Indicate whether sewage sludge that meets the Table 1 ceiling concentrations, the Table 3 pollutant concentrations, Class A pathogen requirements, and one of vector attraction reduction options 1–8 is placed in bags or other containers at your facility.

Sewage sludge placed in a bag or other container must meet the Table 1 ceiling concentrations, the Class A pathogen requirements, one of vector attraction reduction options 1–8, and either the Table 3 pollutant concentrations or the annual pollutant loading rates (APLRs) in Table 4 of § 503.13. This question does not pertain to sewage sludge meeting APLRs.

An *other container* is either an open or closed receptacle, including but not limited to a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

B.5. Sale or Give-Away in a Bag or Other Container for Application to the Land. Complete this section if sewage sludge from this facility is sold or given away in a bag or other container for application to the land. *Skip* this section, however, for any sewage sludge you reported in Section B.4 (i.e., sludge meeting Table 1 ceiling concentrations, Table 3 pollutant concentrations, Class A pathogen requirements, and one of vector attraction reduction options 1–8).

A *bag or other container* includes an open or closed receptacle such as a bucket, box, carton, or vehicle or trailer with a load capacity of one metric ton or less.

a. Provide the total dry metric tons per 365-day period placed in bags or other containers for sale or give-away.

b. Attach with this application a copy of any label or information sheet that accompanies the product being sold or given away. When sewage sludge is placed in a bag or other container for sale or give-away for application to the

land, either a label must be affixed to the bag or other container, or an information sheet must be provided to the person receiving the sewage sludge. The label or information sheet must contain the following information:

- The name and address of the person who prepared the sewage sludge that is sold or given away in a bag or other container for application to the land;

- A statement that application of the sewage sludge to the land is prohibited except in accordance with the instructions on the label or information sheet; and

- The annual whole sludge application rate for the sewage sludge that does not cause any of the annual pollutant loading rates in Table 4 of § 503.13 to be exceeded.

B.6. Shipment-Off Site for Treatment or Blending. Complete this section if you provide sewage sludge to another facility, and that facility provides treatment or blending (i.e., it derives a material from sewage sludge).

Skip this section, however, for any sewage sludge that is:

- Covered in Section B.4 (i.e., it meets the Table 1 ceiling concentrations, the Table 3 pollutant concentrations, Class A pathogen requirements, and one of vector attraction reduction options 1–8);

- Covered in Section B.5 (i.e., it is placed in a bag or other container at your facility); or

- Sent directly from your facility to a land application site or surface disposal site.

If you provide sewage sludge to more than one facility that provides treatment or blending, complete Section B.6 for each such facility. Attach additional pages as necessary.

a. Provide the official or legal name of the facility receiving the sewage sludge. Do not use a colloquial name.

b. Provide the name, title, and work telephone number of a person who is thoroughly familiar with the operation of the facility receiving the sewage sludge, and who can be contacted by the permitting authority if necessary.

c. Provide the complete mailing address of the receiving facility where correspondence should be sent.

d. Provide the total dry metric tons per 365-day period your facility sends to the receiving facility. Do not include sewage sludge that other facilities send to the receiving facility.

e. Indicate whether the facility receiving the sewage sludge provides additional treatment to reduce pathogens in sewage sludge from your facility. Also indicate whether Class A or Class B pathogen reduction is

achieved before the sewage sludge leaves the receiving facility.

Options for meeting Class A pathogen reduction are listed at § 503.32(a).

Options for meeting Class B pathogen reduction are listed at § 503.32(b).

Provide a written description of any treatment processes used at the receiving facility to reduce pathogens in sewage sludge, including an indication of how the treatment fulfills one of the options for meeting Class A or Class B pathogen reduction. You may attach existing documentation (e.g., technical or process specifications) to meet this requirement.

f. Indicate whether the facility receiving the sewage sludge provides additional treatment to reduce vector attraction characteristics of the sewage sludge from your facility. Also indicate whether any of vector attraction reduction options 1–8 are met before the sewage sludge leaves the receiving facility. Options 1–8 are typically met at the point of sewage sludge generation or treatment; additional options are available, but these are typically met at the point of use or disposal.

Land application: Sewage sludge applied to agricultural land, forest, a public contact site, or a reclamation site must meet one of vector attraction reduction options 1–10, which are defined at § 503.33(b) (1)–(10), respectively. Sewage sludge applied to a lawn or home garden, or placed in a bag or other container for sale or give-away for application to the land, must meet one of vector attraction reduction options 1–8, defined at § 503.33(b) (1)–(8), respectively.

Surface disposal: Sewage sludge placed on an active sewage sludge unit meet one of vector attraction reduction options 1–11, which are defined at § 503.33(b) (1)–(11), respectively.

Provide a written description of any treatment processes used at the receiving facility to reduce vector attraction reduction characteristics of sewage sludge, including an indication of how the treatment fulfills one of options 1–8 for vector attraction reduction. You may attach existing documentation (e.g., technical or process specifications) to meet this requirement.

g. Provide a written description of any other treatment or blending not described in B.6.e or B.6.f above. This does not include dewatering of sewage sludge. You may attach existing documentation (e.g., technical or process specifications) to meet this requirement.

h. If you generate sewage sludge or derive a material from sewage sludge, and you provide that sewage sludge to

another person who derives a material from the sewage sludge, § 503.12(g) requires you to provide that person with notice and necessary information to comply with land application requirements of Part 503. If you answered “yes” to B.6.e, B.6.f, or B.6.g, the receiving facility is a “person who prepares sewage sludge” and you must provide, with this application, a copy of any notice and other information you provide to the receiving facility.

i. If the receiving facility places sewage sludge from your facility in a bag or other container for sale or give-away for application to the land, provide a copy of all labels or notices that accompany the product being sold or given away.

A *bag or other container* includes an open or closed receptacle such as a bucket, box, carton, or vehicle or trailer with a load capacity of one metric ton or less.

When sewage sludge is placed in a bag or other container for sale or give-away for application to the land, either a label must be affixed to the bag or other container, or an information sheet must be provided to the person receiving the sewage sludge. The label or information sheet must contain the following information:

- The name and address of the person who prepared the sewage sludge that is sold or given away in a bag or other container for application to the land;
- A statement that application of the sewage sludge to the land is prohibited except in accordance with the instructions on the label or information sheet; and
- The annual whole sludge application rate for the sewage sludge that does not cause any of the annual pollutant loading rates in Table 4 of § 503.13 to be exceeded.

B.7. Land Application of Bulk Sewage Sludge. Complete this section if bulk sewage sludge from your facility is sprayed or spread onto the land surface, injected below the land surface, or incorporated into the soil in order to condition the soil or fertilize crops or vegetation grown in the soil.

Skip this section, however, for sewage sludge that is:

- Covered in Section B.4 (i.e., it meets the ceiling concentrations in Table 1 of § 503.13(b)(1), the pollutant concentrations in Table 3 of § 503.13(b)(3), the Class A pathogen reduction requirements in § 503.32(a), and one of the vector attraction reduction options in § 503.33(b)(1)–(8));

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- Covered in Section B.5 (i.e., it is placed in a bag or other container for

sale or give-away for application to the land); or

- Covered in Section B.6 (i.e., it is sent to another facility for treatment or for blending).

Bulk sewage sludge is defined as sewage sludge that is not sold or given away in a bag or other container for application to the land. (A *bag or other container* includes an open or closed receptacle such as a bucket, box, carton, or vehicle or trailer with a load capacity of one metric ton or less.)

If you complete this section (which requests summary information for all bulk sewage sludge that is applied to the land), also complete Section C for each land application site.

a. Provide the total dry metric tons per 365-day period your facility sends to all land application sites. Do not include sewage sludge sent to land application sites by other facilities.

b. Indicate whether all land application sites are identified in Section C of this application. If you are not identifying all sites in Section C, provide a copy of the land application plan with this permit application. (Information is collected in Section C for each land application site that has been identified at the time of permit application.)

Current regulations require you to submit a *land application plan* at the time of permit application if you intend to apply sewage sludge to land application sites that have not been identified at the time of permit application. (This requirement does not apply if your sewage sludge meets the ceiling concentrations in Table 1 of § 503.13(b)(1), the pollutant concentrations in Table 3 of § 503.13(b)(3), the Class A pathogen reduction requirements in § 503.32(a), and one of the vector attraction reduction options in § 503.33(b) (1)–(8).)

At a minimum, the land application plan must:

- Describe the geographical area covered by the plan;
- Identify site selection criteria;
- Describe how sites will be managed;
- Provide for advance notice to the permitting authority of specific land application sites and a reasonable time for the permitting authority to object prior to the sewage sludge application; and
- Provide for advance public notice as required by State and local law, but in all cases require notice to land owners and occupants adjacent to or abutting the proposed land application sites.

The permit writer will work with you to develop additional details of the land application plan on a case-by-case basis.

Such details include site selection criteria (site slope, run-on and run-off control, etc.) and site management guidelines (sludge application rates, access controls, etc.).

The land application plan is an alternative to either (1) requiring identification of, and permit conditions for, all potential land application sites at the time of permit issuance, or (2) requiring an individual permit action for each approval of a land application site. A land application plan provides for public notice when the land application plan is developed as part of the permit, and it discusses how the public will be notified on a case-by-case basis. For this reason, public notice of the permit will be required to reach areas within the territorial scope of the land application plan. The public notice must indicate that the permit includes a land application plan, and the fact sheet must briefly describe the contents of the land application plan.

c. If any land application sites are located in States other than the State where you generate the bulk sewage sludge or derive the material from sewage sludge, describe how the permitting authority will be notified in the States where the land application sites are located.

The *permitting authority* is either:

- The State, in cases where the State has an EPA-approved sewage sludge management program; or
- The EPA Region, in cases where a State sewage sludge management program has not yet been approved.

The notice must include the following:

- The physical location, by either street address or latitude and longitude, of each land application site;
- The approximate time period bulk sewage sludge will be applied to the site;
- The name, address, and telephone number of the person who prepares the bulk sewage sludge and the NPDES permit number (if applicable) of their facility; and
- The name, address, and telephone number of the person who will apply the bulk sewage sludge and the NPDES permit number (if applicable) for their facility.

B.8. Surface Disposal. Complete this section if sewage sludge from your facility is placed on a surface disposal site. If you own or operate a surface disposal site, also complete Section D.

a. Provide the total dry metric tons per 365-day period that is sent from your facility to all surface disposal sites. Do not include sewage sludge sent to surface disposal sites by other facilities.

A *surface disposal site* is an area of land that contains one or more *active sewage sludge units*. An *active sewage sludge unit* is a sewage sludge unit that has not closed. A *sewage sludge unit* is land on which only sewage sludge is placed for final disposal, excluding land on which sewage sludge is either stored or treated.

b. If sewage sludge from your facility is placed on any surface disposal sites that you do *not* own or operate, complete B.8.c–B.8.f for each surface disposal site that you do not own or operate. If you send sewage sludge to more than one surface disposal site that you do not own or operate, attach additional pages as necessary.

c. Provide the official or legal name (or number) of the site receiving the sewage sludge. Do not use a colloquial name.

d. Provide the name, title, and work telephone number of a person who is thoroughly familiar with the operation of the surface disposal site, and who can be contacted by the permitting authority if necessary.

Indicate whether the facility contact is the site owner, the site operator, or both. For purposes of this form, the *owner* is the person that owns a part of or the entire facility. The *operator* is the person responsible for the overall operation of the facility, and may be different from the *owner*. In general, the operator is the person responsible for the daily functioning of the facility, including sewage sludge use or disposal.

e. Provide the complete mailing address for the surface disposal site where correspondence should be sent.

f. Provide the total dry metric tons of sewage sludge per 365-day period *from your facility* placed on this surface disposal site. Do not include sewage sludge sent to this surface disposal site by other facilities.

B.9. Incineration. Complete this section if sewage sludge from your facility is fired in a sewage sludge incinerator. If you own or operate a sewage sludge incinerator, also complete Section E.

a. Provide the total dry metric tons of sewage sludge per 365-day period that is sent from your facility to all sewage sludge incinerators. Do not include sewage sludge sent to sewage sludge incinerators by other facilities.

A *sewage sludge incinerator* is an enclosed device in which sewage sludge and auxiliary fuel are fired. *Auxiliary fuel* is fuel used to augment the fuel value of sewage sludge, including natural gas, fuel oil, coal, gas generated during anaerobic digestion of sewage sludge, and municipal solid waste (not

to exceed 30 percent of the dry weight of sewage sludge and auxiliary fuel together).

b. If you do not own or operate a sewage sludge incinerator in which sewage sludge from your facility is fired, complete B.9.c–B.9.f each sewage sludge incinerator that you do not own or operate.

c. Provide the official or legal name or number of the sewage sludge incinerator. Do not use a colloquial name.

d. Provide the name, title, and work telephone number of a person who is thoroughly familiar with the operation of the sewage sludge incinerator, and who can be contacted by the permitting authority if necessary.

Indicate whether the incinerator contact is the owner, the operator, or both. For purposes of this form, the *owner* is the person that owns a part of or the entire facility. The *operator* is the person responsible for the overall operation of the facility, and may be different from the *owner*. In general, the operator is the person responsible for the daily functioning of the facility, including sewage sludge use or disposal.

e. Provide the complete mailing address at the sewage sludge incinerator where correspondence should be sent.

f. Provide the total dry metric tons of sewage sludge per 365-day period *from your facility* fired in this sewage sludge incinerator. Do not include sewage sludge sent to this incinerator by other facilities.

B.10. Disposal on a Municipal Solid Waste Landfill.

Complete this section if sewage sludge from your facility is placed on a municipal solid waste landfill (MSWLF) unit.

Provide the information in this section once for each MSWLF on which sewage sludge from your facility is placed. If sewage sludge from your facility is placed on more than one MSWLF, attach additional pages as necessary.

The Part 503 sewage sludge use or disposal regulation does not impose additional requirements on sewage sludge that is sent to a MSWLF, but they cross-reference existing criteria for MSWLFs at 40 CFR Part 258. Therefore, if sewage sludge from your facility is placed on a MSWLF unit, your permit must contain conditions regulating such disposal.

A *MSWLF unit* is a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under § 257.2. A

MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned.

a. Provide the official or legal name of the MSWLF. Do not use a colloquial name.

b. Provide the name, title, and work telephone number of a person who is thoroughly familiar with the operation of the MSWLF, and who can be contacted by the permitting authority if necessary.

c. Provide the complete mailing address for the MSWLF where correspondence should be sent. This may differ from the MSWLF location given below.

d. Provide the physical location (street address) of the MSWLF. If the MSWLF lacks a street address or route number, provide the most accurate alternative geographic information (e.g., township and range, section or quarter section number, nearby highway intersection).

e. Provide the total dry metric tons per 365-day period that is sent from your facility to this MSWLF. Do not include sewage sludge sent to the MSWLF by other facilities.

f. Provide the number and type of any relevant Federal, State, or local environmental permits or construction approvals received or applied for by the MSWLF.

g. Submit information to determine whether the sewage sludge placed on this MSWLF meets applicable requirements for disposal of sewage sludge on a MSWLF.

Sewage sludge placed on a MSWLF must meet requirements in Part 258 concerning the quality of materials placed on a MSWLF unit. In particular:

- Placement on a MSWLF of bulk or noncontainerized liquid waste, as determined using the Paint Filter Liquids Test (Method 9095 in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods—EPA Pub. No. SW-846."), is prohibited.

- Placement on a MSWLF of a regulated hazardous waste, as defined in 40 CFR 261.3, is prohibited.

- If sewage sludge is used as a cover at a MSWLF, the MSWLF owner/operator must demonstrate that the sewage sludge is suitable for use as a cover, and that it provides sufficient control of disease vectors, fires, odors, blowing litter, and scavenging and does not present a threat to human health and the environment.

h. Indicate whether the MSWLF complies with criteria set forth in 40 CFR Part 258.

Part 258 specifies minimum Federal criteria for MSWLFs, including landfills that accept sewage sludge along with household waste. Among these requirements are location restrictions, facility design and operating criteria, ground-water monitoring, and corrective action, closure and post-closure care, along with financial assurance requirements. In contrast to Part 503, Part 258 controls sewage sludge placed on MSWLFs through a facility design and management practice approach. In Part 503, EPA has adopted the Part 258 criteria as the appropriate standard for sewage sludge disposed of with municipal waste. EPA concluded that if sewage sludge is disposed of in a MSWLF complying with Part 258 criteria, public health and the environment are protected.

Note that the POTW is legally responsible for knowing whether a MSWLF is in compliance with Part 258 and may be liable if it sends its sludge to an MSWLF that is not in compliance with Part 258.

Section C: Land Application of Bulk Sewage Sludge

Complete this section if you completed Section B.7 (Land Application of Bulk Sewage Sludge). Unless the permitting authority specifically requires you to complete this section, you may *skip* this section for sewage sludge that is covered in any of the following sections of this application:

- *Section B.4* (the sewage sludge meets the ceiling concentrations in Table 1 of § 503.13(b)(1), the pollutant concentrations in Table 3 of § 503.13(b)(3), the Class A pathogen reduction requirements in § 503.32(a), and one of the vector attraction reduction options in § 503.33(b) (1)–(8)). Such sewage sludges are exempt from the general requirements and management practices of Part 503 when they are land applied (unless the permitting authority requires otherwise), and thus the site information in Section C is not required for permitting.

- *Section B.5* (the sewage sludge is placed in a bag or other container for sale or give-away for application to the land). Section C does not cover the sale or give-away of sewage sludge in a bag or other container for application to the land because EPA typically will not control the users of such sewage sludge (typically, home gardeners or other small-scale users), or the land on which

the sludge is applied, through the generator's permit.

- *Section B.6* (the sewage sludge is sent to another facility for treatment or for blending). Section C does not apply to a generator that sends sewage sludge to another facility for treatment or for blending, because the Part 503 requirements addressed by Section C will largely be the responsibility of the receiving facility.

Bulk sewage sludge is defined as sewage sludge that is not sold or given away in a bag or other container for application to the land. (A *bag or other container* includes an open or closed receptacle such as a bucket, box, carton, or vehicle or trailer with a load capacity of one metric ton or less.)

Provide the information in this section for *each* land application site that has been identified at the time of permit application. Attach additional pages as necessary. In cases where the sewage sludge is applied to numerous sites with similar characteristics, you may combine the information for several sites under a single response (the name and address of each site must still be provided, however).

C.1. Identification of Land Application Site.

a. Provide the site name or number. The name or number is any designation commonly used to refer to the site. If the site has been previously designated in another permit, use that designation.

b. Answer either question 1 or question 2.

1. Provide the physical location (street address) of the land application site. If the site lacks a street address or route number, provide the most accurate alternative geographic information (e.g., township and range, section or quarter section number, nearby highway intersection).

2. Provide the latitude and longitude of the facility. If a map was used to obtain latitude and longitude, provide map datum (e.g., NAD 27, NAD 83) and map scale (e.g., 1:24000, 1:100000).

C.2. Owner Information.

a. Indicate whether you are the owner of this land application site. For purposes of this form, the owner is the person that owns a part of or the entire land application site.

b. If you are not the owner of this land application site, provide the name, telephone number, and complete mailing address for the site owner.

C.3. Applier Information.

a. Indicate whether you are the person who applies sewage sludge to this land application site.

b. If you are not the person who applies sewage sludge to this land application site, provide the name,

telephone number, and mailing address of the person who applies sewage sludge to this land application site.

C.4. Site Type. The "type of land application site" is the intended end use of the land. Part 503 regulates bulk sewage sludge applied to agricultural land, forest, public contact sites, reclamation sites, and lawns and home gardens. Proper identification of the type of land application site is important because the applicable Part 503 requirements—and thus permit conditions—differ according to the type of site.

Agricultural land is land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land, which is open land with indigenous vegetation, and pasture, which is land on which animals feed directly on crops such as grasses, grain stubble, or stover.

Forest is a tract of land thick with trees and underbrush.

A *public contact site* is land with a high potential for contact by the public. Public contact sites include public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

A *reclamation site* is land that has been drastically disturbed by strip mining, fires, construction, etc. As part of the reclamation process, sewage sludge is applied for its nutrient and soil conditioning properties to help stabilize and revegetate the land.

C.5. Crop or Other Vegetation Grown on Site.

a. Identify the type of crop or other vegetation grown on this land application site. If the crop or vegetation to be grown on the site is not yet known, or is likely to change in an unforeseeable manner during the life of the permit, you may so indicate instead of providing the type of crop or other vegetation.

b. Provide the nitrogen requirement for the crop or other vegetation listed in C.5.a. Information on the nitrogen content of vegetation grown on the site may be obtained from local agricultural extension services, a local Farm Advisor's Office, or published sources.

C.6. Vector Attraction Reduction. Identify any vector attraction reduction requirements that are met at the land application site.

a. Specifically, indicate whether vector attraction reduction option 9 (injection below soil surface) or option 10 (incorporation into soil within 6 hours) is met.

Bulk sewage sludge that is applied to the land may meet any of vector attraction reduction options 1–10, as identified in § 503.33(b) (1)–(10), respectively. Options 1–8 were covered in Section B.3, which requests

information on sewage sludge treatment at the facility generating the sewage sludge. If you met any of options 1–8 (e.g., processes to reduce volatile solids, reduce specific oxygen uptake rate, raise pH, raise percent solids), you should have identified that option in Question B.3.c and described how the option is met in Question B.3.d.

By contrast, vector attraction reduction options 9 and 10 are typically met at the land application site. Options 9 and 10 are not available for sewage sludge applied to a lawn or home garden.

b. Provide a written description of how the vector attraction reduction is met.

C.7. Ground-Water Monitoring. If any ground-water monitoring data are available for this land application site, submit the following with the application:

- Available ground-water monitoring data; and
- A written description of the well locations, approximate depth to ground water, and the ground-water monitoring procedures used to obtain these data (you may attach existing documentation to fulfill this requirement).

For purposes of this form, ground-water monitoring means the installation and periodic sampling and analysis of small-diameter wells screened in the aquifer below the base of the deepest active sewage sludge unit.

C.8. Cumulative Loadings and Remaining Allotments.

Complete Section C.8. *only* for sewage sludge that is applied to the site subject to cumulative pollutant loading rates (CPLRs). Sewage sludge applied to the site on or before July 20, 1993, is not subject to this section.

a. Indicate whether you have contacted the permitting authority in the State where the bulk sewage sludge will be applied to ascertain whether bulk sewage sludge subject to CPLRs has been applied to the site since July 20, 1993.

If applicable, provide the name of the permitting authority and the name and phone number of the contact person at the permitting authority.

You may *not* apply bulk sewage sludge subject to CPLRs to the site until you have contacted the permitting authority in that State.

The *permitting authority* is either:

- The State, in cases where the State has an EPA-approved sewage sludge management program; or
- The EPA Region, in cases where a State sewage sludge management program has not yet been approved.

If you answered yes to C.8.a, continue on to C.8.b. If you answered no, skip the rest of Section C.8.

b. Indicate whether, based on your investigation in Section C.8.a or other information, sewage sludge subject to CPLRs has been applied to the site since July 20, 1993.

If you answered yes to C.8.b, continue on to C.8.c. If you answered no, skip the rest of Section C.8.

c. Provide the following information for every other facility that sends (or has sent since July 20, 1993) bulk sewage sludge subject to CPLRs to this site:

- The official or legal name of the facility. Do not use a colloquial name.
- If available, the name, title, and work telephone number of a person who is thoroughly familiar with the facility, and who can be contacted by the permitting authority if necessary.
- The complete mailing address at the facility where correspondence should be sent.

Section D: Surface Disposal

Complete this section if you own or operate a surface disposal site and are required to submit a full permit application (i.e., Part 2 of Form 2S) at this time.

A sewage sludge surface disposal site is, by definition, a treatment works treating domestic sewage, and the owner/operator of the site is required to apply for a permit. You are required to submit Part 2 of this form (including Section D) if:

- The surface disposal site is already covered by an NPDES permit (e.g., a POTW's NPDES permit);
- You are requesting site-specific pollutant limits for an active sewage sludge unit at the surface disposal site; or
- You have been required by the permitting authority to submit a full permit application at this time.

If none of these criteria apply, you should submit Part 1 instead of Part 2 (and may therefore skip Section D). Part 1 requests a limited amount of information from so-called "sludge-only" facilities (facilities without a currently-effective NPDES permit) that are not requesting site-specific permit limits and are not otherwise required to submit a full permit application at this time. Part 1 is intended to allow the permitting authority to identify these facilities, track sewage sludge use and disposal, and establish priorities for permitting.

D.1. Information on Active Sewage Sludge Units. Complete Sections D1. through D5 for *each active sewage sludge unit* you own or operate. If you own or operate more than one active

sewage sludge unit, attach additional pages as necessary.

An *active sewage sludge unit* is an area of land on which only sewage sludge is placed for final disposal. Sewage sludge units include, but are not limited to, natural topographical depressions, man-made excavations, or diked areas designed to dispose of (not treat) sewage sludge. Sewage sludge units do not include areas where sewage sludge is generated as a result of ongoing treatment (e.g., polishing ponds) or land on which sewage sludge is placed for either treatment or storage. Sewage sludge may be stored on an area of land for a period equal to or less than two years. If sewage sludge remains on an area of land for greater than two years, the person who prepares the sewage sludge must develop a rationale for why the land should not be considered an active sewage sludge unit.

Most requirements for surface disposal of sewage sludge under Part 503 pertain to individual active sewage sludge units at a surface disposal site. Permit conditions for your facility may be developed on a unit-by-unit basis, or may be developed for the entire surface disposal site if all units are sufficiently similar.

a. Provide the name or number of the active sewage sludge unit. The name or number is any designation commonly used to refer to the unit. If the active sewage sludge unit has been previously designated in another permit, use that designation.

b. Provide the physical location (street address) of the active sewage sludge unit. If the active sewage sludge unit lacks a street address or route number, provide the most accurate alternative geographic information (e.g., township and range, section or quarter section number, nearby highway intersection).

c. Provide the total dry metric tons per 365-day period placed on the active sewage sludge unit. The amount of sewage sludge placed on an active sewage sludge unit determines the frequency of monitoring for sewage sludge placed on the active sewage sludge unit.

d. Provide the total number of dry metric tons of sewage sludge placed on the active sewage sludge unit over the life of the unit to date.

e. Indicate whether the active sewage sludge unit has a liner. A *liner* is defined as soil or synthetic material with a maximum hydraulic conductivity (permeability) of 1×10^{-7} cm/sec.

If the active sewage sludge unit has a liner, describe the material from which the liner is constructed and specify the

design hydraulic conductivity of that material.

f. Indicate whether the active sewage sludge unit has a leachate collection system. A *leachate collection system* is a system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sewage sludge unit.

If the active sewage sludge unit has a leachate collection system, describe how the system is designed and operated. Also describe the method used for leachate disposal, such as discharge to surface water (provide all applicable permit numbers) or disposal at a hazardous waste treatment, storage, or disposal facility (provide Federal, State, and local permit numbers for this facility).

g. If you answered yes to both D.1.e and D.1.f, pollutant limits do not apply to the active sewage sludge unit.

If the boundary of the active sewage sludge unit without a liner and leachate collection system is less than 150 meters from the property line of the surface disposal site, provide the actual distance in meters.

When the boundary of an active sewage sludge unit without a liner and leachate collection system is less than 150 meters from the property line of the surface disposal site, the pollutant limits for the unit are determined according to the actual distance, as indicated in Table 2 of § 503.23.

h. Provide the remaining capacity of the active sewage sludge unit, in dry metric tons, and the anticipated closure date of the active sewage sludge unit, if known. Attach to the application a copy of any closure plan that has been developed for the active sewage sludge unit.

D.2. Sewage Sludge from Other Facilities. If sewage sludge is sent to this active sewage sludge unit by any facilities other than your facility, complete this section for each such facility. If sewage sludge from more than one facility other than your facility is placed on this active sewage sludge unit, attach additional pages as necessary.

a. Provide the official or legal name of the facility providing the sewage sludge. Do not use a colloquial name.

b. Provide the name, title, and work telephone number of a person who is thoroughly familiar with the operation of the facility that is providing the sewage sludge, and who can be contacted by the permitting authority if necessary.

c. Provide the complete mailing address of the facility providing the sewage sludge.

d. Indicate the class of pathogen reduction that is achieved before sewage sludge leaves the facility that generates the sewage sludge.

Options for meeting Class A pathogen reduction are listed at § 503.32(a). Options for meeting Class B pathogen reduction are listed at § 503.32(b).

e. Provide a written description of any treatment processes used at the facility providing the sewage sludge to reduce pathogens in the sewage sludge, including, where applicable, how the treatment fulfills one of the options for meeting Class A or Class B pathogen reduction. You may attach existing documentation (e.g., technical or process specifications) to meet this requirement.

f. Indicate whether any of the vector attraction reduction options 1–8, (at § 503.33(b) (1)–(8), respectively) are met at the facility providing the sewage sludge. Options 1–8 are typically met at the point of sewage sludge generation. Additional options are available, but these are typically met at the point of disposal.

You may select “none or unknown” only if option 9 (injection below land surface), option 10 (incorporation into soil within six hours), or option 11 (daily cover) is met at the point of disposal at this active sewage sludge unit (see Section D.3.a).

g. Provide a written description of any treatment processes used at the facility providing the sewage sludge to reduce vector attraction reduction characteristics of sewage sludge, including an indication of how the treatment fulfills one of options 1–8 for vector attraction reduction. You may attach existing documentation (e.g., technical or process specifications) to meet this requirement.

h. Provide a written description of any other treatment processes at the facility providing the sewage sludge that are not described in D.2.d–D.2.g. You may attach existing documentation (e.g., technical or process specifications) to meet this requirement.

D.3. Vector Attraction Reduction. Complete this section for each active sewage sludge unit.

a. Indicate whether any of vector attraction reduction options 9–11 (at § 503.33(b) (9)–(11), respectively) are met when the sewage sludge is placed on this active sewage sludge unit.

Sewage sludge placed on an active sewage sludge unit must meet one of vector attraction reduction options defined at § 503.33(b) (1)–(11). Options 1–8 are typically met at the point of sewage sludge generation (see Question D.2.f). Options 9–11 are typically met at the point of disposal.

b. Provide a written description of any treatment processes used at the active sewage sludge unit to reduce vector attraction reduction characteristics of sewage sludge, including an indication of how the treatment fulfills one of options 9–11 for vector attraction reduction. You may attach existing documentation (e.g., technical or process specifications) to meet this requirement.

D.4. Ground-Water Monitoring.

Placement of sewage sludge on an active sewage sludge unit must not contaminate an aquifer. Compliance must be demonstrated through either: (1) the results of a ground-water monitoring program developed by a qualified ground-water scientist, or (2) certification by a qualified ground-water scientist that contamination has not occurred.

Contaminate an aquifer means to introduce a substance that causes the maximum contaminant level (MCL) for nitrate in 40 CFR 141.11 to be exceeded in ground water, or that causes the existing concentration of nitrate in ground water to increase when the existing concentration of nitrate in the ground water exceeds the MCL for nitrate in 40 CFR 141.11.

The MCL for nitrate is 10 milligrams/liter.

This section solicits existing ground-water monitoring data and other documentation to indicate the potential for contamination of an aquifer at the active sewage sludge unit, and the capability of the owner/operator of the surface disposal site to demonstrate that contamination has not occurred.

a. If ground-water monitoring is conducted for this active sewage sludge unit, provide the following:

- Available ground-water monitoring data; and
- A written description of the well locations, approximate depth to ground water, and the ground-water monitoring procedures used to obtain these data (you may attach existing documentation to fulfill this requirement).

For purposes of this application, *ground-water monitoring* means the installation and periodic sampling and analysis of small-diameter wells in the aquifer below the base of the deepest active sewage sludge unit.

b. If a ground-water monitoring program has been prepared for this active sewage sludge unit (regardless of whether ground-water monitoring is currently conducted), submit a copy of the program with this permit application. The program should include the number, depth, and location of all wells; the frequency and method

of sampling; and the parameters for which the ground water is tested.

c. If you have obtained a certification from a qualified ground-water scientist that contamination of the aquifer below the active sewage sludge unit has not occurred, submit a copy of the certification with this permit application.

A *qualified ground-water scientist* is an individual with a baccalaureate or post-graduate degree in the natural sciences or engineering who has sufficient training and experience in ground-water hydrology and related fields, as may be demonstrated by State registration, professional certification, or completion of accredited university programs, to make sound professional judgments regarding ground-water monitoring, pollutant fate and transport, and corrective action.

D.5. Site-Specific Limits. Indicate whether you are seeking site-specific pollutant limits in your permit for the sewage sludge placed on this active sewage sludge unit.

After August 18, 1993, you are allowed to seek site-specific pollutant limits only for good cause, and must do so within 180 days of becoming aware that good cause exists. If you request site-specific pollutant limits with this permit application, you are required to submit information supporting the request, including a demonstration that existing values for site parameters specified by the permitting authority differ from the values for those parameters used to develop the pollutant limits in Table 1 of § 503.23. You must also submit follow-up information at the request of the permitting authority.

If the permitting authority determines that site-specific pollutant limits are appropriate, the permitting authority may specify site-specific limits in the permit as long as the existing concentrations of the pollutants in the sewage sludge are not exceeded.

Section E: Incineration

Complete this section if you own or operate a sewage sludge incinerator. If you own or operate more than one sewage sludge incinerator, complete this section for each incinerator unit. Attach additional pages as necessary.

A sewage sludge incinerator is, by definition, a treatment works treating domestic sewage, and the owner/operator of a sewage sludge incinerator is required to submit a full permit application (i.e., Part 2 of Form 2S).

E.1. Incinerator Identification.

a. Provide the name or number of the sewage sludge incinerator unit. The name or number is any designation

commonly used to refer to the unit. If the unit has been previously designated in another permit, use that designation.

b. Provide the physical location (street address) of the sewage sludge incinerator. If the incinerator lacks a street address or route number, provide the most accurate alternative geographic information (e.g., township and range, section or quarter section number, nearby highway intersection).

E.2. Amount Fired. Provide the total dry metric tons of sewage sludge (dry weight basis) fired in the sewage sludge incinerator unit per 365-day period.

E.3. Beryllium NESHAP.

The firing of sewage sludge in a sewage sludge incinerator must not violate the National Emission Standard (NESHAP) for beryllium as established in Subpart C of 40 CFR Part 61. The beryllium NESHAP only applies, however, to sewage sludge incinerators firing "beryllium-containing waste." The beryllium NESHAP is 10 grams of beryllium in the exit gas over a 24-hour period, unless the incinerator owner/operator has been approved to meet a 30-day average ambient concentration limit on beryllium in the vicinity of the sewage sludge incinerator of 0.01 µg/m³. Complete this section to demonstrate compliance with the beryllium NESHAP.

a. Indicate whether sewage sludge fired in this sewage sludge incinerator is beryllium-containing waste. Beryllium-containing waste is material contaminated with beryllium or beryllium compounds used or generated during any process or operation performed by one of several sources.

Submit information, test data, and a description of measures taken that demonstrate whether the sewage sludge fired in this sewage sludge incinerator is beryllium-containing waste, and will continue to remain as such.

b. If the sewage sludge fired in this sewage sludge incinerator is beryllium-containing waste, submit a complete report of the latest beryllium emission rate testing, as well as documentation of ongoing incinerator operating parameters indicating that the NESHAP emission rate limit for beryllium has been and will continue to be met.

E.4. Mercury NESHAP.

The firing of sewage sludge in a sewage sludge incinerator must not violate the NESHAP for mercury as established in Subpart E of 40 CFR Part 61. Complete this section to demonstrate compliance with the mercury NESHAP.

a. Indicate whether stack testing or sewage sludge sampling is being used to demonstrate compliance with the mercury NESHAP. If stack testing is

used, complete E.4.b. below. If sewage sludge sampling is used, complete E.4.c. below.

b. *Stack testing option.* Stack testing must be conducted using Method 101A in 40 CFR Part 61, Appendix B ("Determination of Particulate and Gaseous Mercury Emissions from Sewage Sludge Incinerators"). The total quantity of mercury emitted into the atmosphere from all incinerators at a site must not exceed 3200 grams over a 24-hour period.

If stack testing is used, submit the following with this application:

- A complete report of stack testing and documentation of ongoing incinerator operating parameters indicating that the incinerator has and will continue to meet the mercury NESHAP emission rate limit.
- Copies of mercury emission rate tests for the two most recent years in which testing was conducted.

c. *Sampling option.* Sewage sludge must be sampled and analyzed using Method 105 in 40 CFR Part 61 Appendix B ("Determination of Mercury in Wastewater Treatment Plant Sewage Sludge"), and the mercury emissions calculated using the following equation must not exceed 3200 grams over a 24-hour period:

$$E_{\text{Hg}} = \frac{(M) \times (Q) \times (F_{\text{sm}(\text{avg})})}{1000}$$

where:

E_{Hg} = mercury emissions, g/day

M = mercury concentration in sewage sludge on a dry solids basis, in micrograms/gram

Q = sludge charging rate, in kg/day

F_{sm} = weight fraction of solids in the collected sewage sludge after mixing.

If sewage sludge sampling is used, submit a complete report of sewage sludge sampling and documentation of ongoing incinerator operating parameters indicating that the incinerator has and will continue to meet the mercury NESHAP emission rate limit.

E.5. Dispersion Factor.

a. Provide the dispersion factor, in micrograms/cubic meter/gram/second, for the sewage sludge incinerator.

The *dispersion factor* is the ratio of the increase in the ground-level ambient air concentration for a pollutant at or beyond the property line of the site where the sewage sludge incinerator is located to the mass emission rate for the pollutant from the incinerator stack. The dispersion factor is calculated individually by each applicant based on the results of an air dispersion model specified by the permitting authority.

b. Provide the name and type of the air dispersion model used to obtain the dispersion factor.

Approved air dispersion models are listed in EPA's *Guideline on Air Quality Models* and EPA's Support Center for Regulatory Air Models (SCRAM) bulletin board. Unless a pre-existing modeling effort has been used to calculate dispersion factor (and the results have been approved by EPA), you should work closely with the permitting authority to prepare a modeling protocol.

c. Submit a copy of the modeling results and supporting documentation with this application.

E.6. Control Efficiency.

a. Provide the control efficiency, in hundredths, for arsenic, cadmium, chromium, lead, and nickel at this sewage sludge incinerator.

Control efficiency is the mass of a pollutant in the sewage sludge fed to an incinerator minus the mass of that pollutant in the exit gas from the incinerator stack, divided by the mass of the pollutant in the sewage sludge fed to the incinerator.

b. Submit a copy of the results of performance testing and supporting documentation, including testing dates.

Control efficiency must be determined by a performance test, the protocol for which must be approved by EPA.

E.7. Risk Specific Concentration for Chromium. The risk specific concentration (RSC) for arsenic, cadmium, chromium, and nickel is used to calculate pollutant limits for these metals in the permit. With the exception of chromium, the RSC for these metals is provided in Table 1 of § 503.43. The RSC for chromium, however, may be determined in two ways: (1) it may be located in Table 2 of § 503.43 according to the type of incinerator; or (2) it may be calculated based on the ratio of hexavalent chromium to total chromium in the exhaust stack gas.

a. Provide the RSC to be used in establishing a permit limit for chromium, in micrograms per cubic meter.

b. Specify whether the RSC was:

- Provided in Table 2 of § 503.43; or
- Calculated, using Equation 6 in 40 CFR 503.43, based on the ratio of hexavalent chromium to total chromium in the exhaust stack gas.

c. If the RSC was looked up in Table 2 of § 503.43, identify which category of incinerator type you used to obtain the RSC.

d. If you calculated the RSC using Equation 6 in 40 CFR 503.43, provide the decimal fraction of hexavalent chromium concentration to total chromium concentration in the stack

exit gas. Also submit the results of incinerator stack tests for hexavalent and total chromium concentrations, including date(s) of test.

E.8. Operational Standard for Total Hydrocarbons (THC) or Carbon Monoxide (CO).

Total hydrocarbons (THC) means the organic compounds in the exit gas from a sewage sludge incinerator stack, as measured using a flame ionization detection instrument referenced to propane. Carbon monoxide (CO) can be monitored instead of THC. The operational standard for THC or CO requires that the THC or CO concentration in the exit gas be corrected for zero percent moisture and to seven percent oxygen.

a. Provide the raw value for the THC or CO concentration in stack emissions, in parts per million (ppm). The *raw value* is the concentration measured directly by the flame ionization detection instrument.

b. Provide the percent of moisture content in stack gas. This is used to correct the raw THC or CO concentration value for zero percent moisture.

c. Provide percent oxygen concentration in stack gas (in dry volume/dry volume). This is used, after correction of the THC or CO concentration for zero percent moisture, to correct the THC or CO concentration to seven percent oxygen.

d. Provide the corrected value for the THC or CO concentration in stack emissions, in ppm. The *corrected value* is the raw concentration, corrected for zero percent moisture and to seven percent oxygen.

The raw THC or CO value is first corrected for zero percent moisture by multiplying by the following correction factor (from 40 CFR 503.44):

$$\text{Correction factor (dimensionless)} = \frac{1}{(0\% \text{ moisture}) (1-X)}$$

where X is the decimal fraction of the percent moisture in the sewage sludge incinerator exit gas in hundredths.

The dry value is then corrected to seven percent oxygen using the correction factor determined according to the following equation:

$$\text{Correction factor (dimensionless)} = \frac{14}{(7\% \text{ moisture}) (21-Y)}$$

where Y = percent oxygen concentration in the sewage sludge incinerator stack exit gas (dry volume/dry volume).

e. Submit documentation used to derive the raw THC or CO

concentration, moisture content, oxygen concentration, and corrected THC or CO concentration.

E.9. Operating Parameters.

a. Provide the type of sewage sludge incinerator—i.e., whether the incinerator is multiple hearth, fluidized bed, flash drying, electric furnace, or other.

b. Provide with the application the following data on combustion temperature: temperature data (including testing date(s)), a description of temperature measurement and data recording and handling systems, and a description of how such combustion temperature data have been averaged.

The permitting authority will use performance test data to specify the maximum combustion temperature in the permit as a "never to exceed" value. Regulated facilities must also install, calibrate, operate, and maintain an instrument that measures and records combustion temperatures continuously.

c. Provide the sewage sludge feed rate in dry metric tons per day, and indicate whether the *average daily amount* or the *maximum design capacity* feed rate was used. Submit supporting documentation

describing how the feed rate was calculated.

The *average daily amount* feed rate is the average daily amount of sewage sludge fired in all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located for the number of days in a 365-day period that each sewage sludge incinerator operates.

The *maximum design capacity* feed rate is the average daily design capacity for all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located.

The permitting authority will use the feed rate you report as the basis for calculating pollutant limits and will include it as an enforceable condition in the permit.

d. Provide the incinerator stack height (in meters) for each stack, and indicate whether actual or creditable stack height was used.

The *actual stack height* is the difference between the elevation at the top of the stack and the elevation of the ground at the base of the stack, when the difference is equal to or less than 65 meters.

The *creditable stack height* is used if the difference is greater than 65 meters. This is determined in accordance with 40 CFR 51.100(ii).

e. Submit information documenting the operating parameters for the air pollution control device(s) used for this sewage sludge incinerator.

E.10. Monitoring Equipment. Provide a detailed list of the equipment in place to monitor total hydrocarbons or carbon monoxide, percent oxygen, moisture content, and combustion temperature. Monitoring equipment includes, but is not limited to, thermocouples, oxygen continuous emissions monitors, furnace temperature gauges, sewage sludge and auxiliary fuel feed rate monitors, differential pressure detectors, liquid or gas flow detectors, and air pollution control devices.

E.11. Air Pollution Control Equipment. Provide a list of the equipment in place to control emissions from the sewage sludge incinerator stack. Indicate the type and capacity for each piece of equipment listed.

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Part III

**Consumer Product
Safety Commission**

16 CFR Part 1203
Safety Standard for Bicycle Helmets;
Proposed Rule

**CONSUMER PRODUCT SAFETY
COMMISSION****16 CFR Part 1203****Proposed Rule: Safety Standard for
Bicycle Helmets****AGENCY:** Consumer Product Safety
Commission.**ACTION:** Proposed rule.

SUMMARY: Pursuant to the Children's Bicycle Helmet Safety Act of 1994, the Commission is proposing a safety standard that would require bicycle helmets to meet impact-attenuation and other requirements. This proposal modifies the bicycle helmet standard proposed by the Commission in the Federal Register of August 15, 1994.

The proposed standard establishes requirements derived from one or more of the voluntary standards applicable to bicycle helmets. In addition, the proposed standard includes requirements specifically applicable to children's helmets and requirements to prevent helmets from coming off during an accident. The proposed standard also contains testing and recordkeeping requirements to ensure that bicycle helmets meet the standard's requirements.

DATES: Comments on the proposal should be submitted no later than February 20, 1996.

Comments on elements of the proposal that, if issued, would constitute collection of information requirements under the Paperwork Reduction Act may be filed with the Office of Management and Budget ("OMB"). OMB is required to make a decision concerning the collections of information contained in the proposed rule between 30 and 60 days after publication. Thus, although comments will be received by OMB until February 5, 1996, a comment to OMB is best assured of having its full effect if OMB receives it by January 4, 1996.

ADDRESSES: Comments to the Commission should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 502, 4330 East-West Highway, Bethesda, Maryland 20814-4408, telephone (301)504-0800. Comments also may be filed with the Commission by facsimile to (301)504-0127, or by electronic mail via info@cpsc.gov. Comments should include a caption or cover indicating that they are directed to the Office of the Secretary and are comments on the

revised proposed Safety Standard for Bicycle Helmets.

Comments to OMB should be directed to the Desk Officer for the Consumer Product Safety Commission, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503. The Commission encourages commenters to provide copies of such comments to the Commission's Office of the Secretary, with a caption or cover letter identifying the materials as comments submitted to OMB on the proposed collection of information requirements for bicycle helmets.

FOR FURTHER INFORMATION CONTACT: Scott Heh, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0494 ext. 1308.

SUPPLEMENTARY INFORMATION:**A. Introduction and Background**

Introduction. In this notice, the Consumer Product Safety Commission ("the Commission" or "CPSC") proposes a mandatory safety standard applicable to bicycle helmets.¹ This proposal modifies the bicycle helmet standard proposed by the Commission in the Federal Register of August 15, 1994. 59 FR 41719.

The Commission seeks comments from interested members of the public on the revised proposed standard. Comments should be limited to those aspects of the proposed standard that have changed substantively from the earlier proposal, or that are affected by a substantive change.

Because of the growing use of helmets, other nations may be developing or revising safety standards for bicycle helmets. Accordingly, the Commission invites comments from counterpart agencies in foreign governments, foreign standards developers, and others who might be interested in this proposed standard. This invitation is in addition to the routine international notification of this proposed rule that is provided by the World Trade Organization Agreement on Technical Barriers to Trade.

Background. Head injury is a leading cause of accidental death and disability among children in the United States, resulting in over 100,000 hospitalizations every year. Studies have shown that children under the age

of 14 are more likely to sustain head injuries than adults, and that children's head injuries are often more severe than those sustained by adults.

In general, head injuries fall under one of two main categories—focal and diffuse. Focal injuries are limited to the area of impact, and include injuries such as contusions, hematomas, lacerations, and fractures. Diffuse brain injuries (also known as diffuse axonal injury) involve trauma to the neural and vascular elements of the brain at the microscopic level. The effects of such diffuse damage may vary from a completely reversible injury, such as a mild concussion, to prolonged coma and death.

Based on data from CPSC's National Electronic Injury Surveillance System ("NEISS"), an estimated 606,000 bicycle-related injuries were treated in U.S. hospital emergency rooms in 1994. In addition, about 1,000 bicycle-related fatalities occur each year, according to the National Safety Council.

A Commission study of bicycle use and hazard patterns in 1993 indicated that almost one-third of the injuries involved the head.² Published data indicate that, in recent years, almost two-thirds of all bicycle-related deaths involved head injury.³

Younger children are at particular risk of head injury. The Commission's 1993 study indicated that when other factors were held constant statistically, the injury risk for children under age 15 was over 5 times the risk for older riders. About one-half of the injuries to children under the age of 10 involved the head, compared to about one-fifth of the injuries to older riders. Children were also less likely to have been wearing a helmet at the time of a bicycle-related incident than were adults.

Research has shown that helmets may reduce the risk of head injury to bicyclists by about 85 percent, and the risk of brain injury by about 88 percent.⁴ The Commission's Bicycle Use Study

²Gregory B. Rodgers, Deborah K. Tinsworth, Curtis Polen, Suzanne Cassidy, Celestine M. Trainor, Scott R. Heh, Mary F. Donaldson, "Bicycle Use and Hazard Patterns in the United States," U.S. Consumer Product Safety Commission (June 1994) ("Bicycle Use Study").

³Jeffrey J. Sachs, MPH; Patricia Holmgren, M.S.; Suzanne M. Smith, M.D.; and Daniel M. Sosin, M.D., "Bicycle-Associated Head Injuries and Deaths in the United States from 1984 through 1988," *Journal of the American Medical Association* 266 (December 1991): 3016-3018.

⁴Robert S. Thompson, M.D.; Frederic P. Rivara, M.D.; and Diane C. Thompson, M.S., "A Case Control Study of the Effectiveness of Bicycle Safety Helmets," *The New England Journal of Medicine* 320 (May 1989): 1361-1367.

¹The Commission approved this Federal Register notice by a vote of 2-1. Chairman Ann Brown and Commissioner Thomas H. Moore voted to approve it as published. Commissioner Mary Sheila Gall voted to approve the proposed rule with a change, which was not adopted by the Commission, to give companies more time to comply with agency requests for records.

found that about 18 percent of bicyclists wear helmets.⁵

On June 16, 1994, the Children's Bicycle Helmet Safety Act of 1994 (the "Act" or "the Bicycle Helmet Safety Act") was enacted. 15 U.S.C. 6001-6006. Section 205 of this Act provides that bicycle helmets manufactured more than 9 months from that date shall conform to at least one of the following interim safety standards: (1) The American National Standards Institute (ANSI) standard designated as Z90.4-1984, (2) the Snell Memorial Foundation standard designated as B-90, (3) the ASTM (formerly the American Society for Testing and Materials) standard designated as F 1447, or (4) any other standard that the Commission determines is appropriate. 15 U.S.C. 6004 (a)-(b). On March 23, 1995, the Commission published its determination that five additional voluntary safety standards for bicycle helmets are appropriate as interim mandatory standards. 60 FR 15,231. These standards are ASTM F 1447-1994, Snell B-90S, N-94, and B-95, and the Canadian voluntary standard CAN/CSA-D113.2-M89. In that notice, the Commission also clarified that the ASTM standard F 1447 referred to in the Act is the 1993 version of that standard. The interim standards are codified at 16 CFR 1203.

Section 205(c) of the Act directed the Consumer Product Safety Commission to begin a proceeding under the Administrative Procedure Act, 5 U.S.C. 553, to:

1. Review the requirements of the interim standards described above and establish a final standard based on such requirements;

2. Include in the final standard a provision to protect against the risk of helmets coming off the heads of bicycle riders;

3. Include in the final standard provisions that address the risk of injury to children; and

4. Include additional provisions as appropriate. 15 U.S.C. 6004(c).

Section 205(c) the Act provides that the final standard shall take effect 1 year from the date it is issued. 15 U.S.C. 6004(c). Section 205(d) of the Act provides that failure to conform to an interim standard shall be considered a violation of a consumer product safety standard issued under the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051-2084. Section 205(d) also provides that the final standard shall be considered to be a consumer product safety standard issued under the CPSA. However, section 205(c) of the Act

provides that the provisions of the CPSA regarding rulemaking procedures, statutory findings, and judicial review (15 U.S.C. 2056, 2058, 2060, and 2079(d)) shall not apply to this proceeding or to the final standard. 15 U.S.C. 6004(c). When the final standard becomes effective, it will be codified at 16 CFR 1203 and will replace the interim standards. 15 U.S.C. 6004(d).

B. Originally Proposed Standard

The Commission reviewed the bicycle helmet standards identified in the Act (ANSI, ASTM, and Snell), as well as international bicycle helmet standards and draft revisions of the ANSI, ASTM, and Snell standards that were then under consideration. Based on this review, the Commission developed a proposed final safety standard for bicycle helmets. 59 FR 41,719 (August 15, 1994).

The major features of the originally proposed standard were as follows:

1. Impact attenuation. The originally proposed standard measures the ability of the helmet to protect the head in a collision by securing the helmet on a headform and dropping the helmet/headform assembly from various heights onto a fixed steel anvil. The original proposal specified a constant mass of 5 kg for the drop assembly (not including the helmet). However, the Commission requested comment on the alternative of specifying a different drop mass for each headform size.

Under the proposed standard, the helmet is tested with three types of anvils (flat, hemispherical, and "curbstone," as shown in Figures 11, 12, and 13 of the revised proposed standard published in this notice). These anvils represent types of surfaces that may be encountered in actual riding conditions. Instrumentation within the headform records the headform's impact in multiples of the acceleration due to gravity ("g"). Impact tests are performed on different helmets, each of which has been subjected to one of four environmental conditions. These environments are: ambient (room temperature), high temperature (117-127 °F), low temperature (3-9 °F), and immersion in water for 4-24 hours.

Impacts are specified on a flat anvil from a height of 2 meters and on hemispherical and curbstone anvils from a height of 1.2 meters. Consistent with the requirements of the ANSI, Snell, and ASTM standards, the peak headform acceleration of any impact shall not exceed 300 g for an adult helmet, the value originally proposed for both adult and child helmets. In addition, maximum time limits of 6 milliseconds ("ms") and 3 ms were

originally proposed for the allowable duration of the impact at the 150-g and 200-g levels, respectively.

One difference from the ANSI, ASTM, and Snell standards that was originally proposed for the mandatory standard was the designation for the area of the helmet that must provide impact protection. The originally proposed area of impact protection for the CPSC standard was reached by combining the ANSI and ASTM procedures. The procedure for defining the area of the helmet subject to impact attenuation testing is described at § 1203.11.

2. Children's helmets. The originally proposed mandatory standard specified an increased area of head coverage for small children. A study by Biokinetics & Associates Ltd. found differences in anthropometric characteristics between young children's heads and older children's and adult heads.⁶ This study led to an ASTM proposal to change the position of the basic plane (an anthropometric reference plane that includes the external ear openings and the bottom edges of the eye sockets) on the smallest test headform to be more representative of children ages 4 years and under. Originally, § 1203.11(b) proposed an extent-of-protection requirement for helmets intended for children 4 years and under based on the adjusted basic plane.

3. Retention system. The dynamic strength of the retention system test addresses the strength of the chin strap to ensure against breakage or excessive elongation of the strap that may contribute to a helmet coming off the head during an accident.

The test requires that the chin strap remain intact and not elongate more than 30 mm (1.2 inches) when subjected to a "shock load" of a 4-kg (8.8-lb) weight falling a distance of 0.6 m (2 ft) onto a steel stop anvil (see Figure 8). This test is performed on one helmet under ambient conditions and on three other helmets after each is subjected to one of the different hot, cold, and wet environments.

4. Peripheral vision. Section 1203.14 of the originally proposed mandatory standard requires that a helmet shall allow a field of vision of 105 degrees to both the left and right of straight ahead. This requirement is consistent with the ANSI, ASTM, and Snell standards.

5. Labels and instructions. Section 1203.6 of the proposed mandatory standard requires certain labels on the helmet, which are consistent with all

⁶Heh, S., Log of ASTM F08.53 Headgear Subcommittee Meeting held May 21, 1992. Date of Entry—June 17, 1992. Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

⁵Supra note 1.

three U.S. voluntary standards. These labels provide the model designation and warnings regarding the protective limitations of the helmet. The labels also provide instructions regarding how to care for the helmet and what to do if the helmet receives an impact. The labels also must carry the statement "Not for Motor Vehicle Use" and a warning that for maximum protection the helmet must be fitted and attached properly to the wearer's head in accordance with the manufacturer's fitting instructions.

The proposed mandatory standard also requires that helmets be accompanied by fitting and positioning instructions, including graphic representation of proper positioning. As noted above, the proposed mandatory standard has performance criteria for the effectiveness of the retention system in keeping a helmet on the wearer's head. However, these criteria may not be effective if the helmet is not well matched to the wearer's head and carefully adjusted to obtain the best fit. Thus, the proposed mandatory standard contains the labeling requirement described above to help ensure that users will purchase the proper helmet and adjust it correctly.

To avoid damaging the helmet by contacting it with harmful common substances, the helmet must be labeled with any recommended cleaning agents, a list of any known common substances that will cause damage, and instructions to avoid contact between such substances and the helmet.

6. Roll off. The originally proposed mandatory standard specified a test procedure and requirement for the retention system's effectiveness in preventing a helmet from "rolling off" a head. The procedure specifies a dynamic impact load of a 4-kg (8.8-lb) weight dropped from a height of 0.6 m (2 ft) to impact a steel stop anvil. This load is applied to the edge of a helmet that is placed on a headform on a support stand (see Figure 7). The helmet fails if it comes off the headform during the test.

These safety requirements, which are proposed pursuant to the Bicycle Helmet Safety Act, are found in Subpart A of the proposed Safety Standard for Bicycle Helmets. The comments received in response to the original proposal, the Commission's responses to these comments, and other changes to the original proposal are discussed in section C of this notice.

Under the authority of section 14(a) of the CPSA, the Commission also proposed certification testing and labeling requirements to ensure that bicycle helmets meet the standard's

safety requirements. These certification requirements are found in Subpart B of the proposed Safety Standard for Bicycle Helmets and are discussed in section D of this notice.

Also, under the authority of section 16(b) of the CPSA, the Commission proposed requirements that records be kept of the required certification testing. These recordkeeping requirements are found in Subpart C of the proposed Safety Standard for Bicycle Helmets and are discussed in section E of this notice.

The interim standards, which are currently codified as 16 CFR 1203, will continue to apply to bicycle helmets manufactured from March 16, 1995, to the date that the final standard becomes effective. Accordingly, the interim standards will continue to be codified, as Subpart D of the standard.

As discussed below, although the Commission is proposing certain changes to the standard, the revised proposal still addresses each of the elements in the original proposal.

The Commission received 37 comments on the proposed bicycle helmet standard from 30 individuals and organizations. After considering these comments and other available information, the Commission decided to propose certain revisions to the originally proposed standard. The proposed revisions are discussed in sections C-E of this notice.

C. The Revised Proposed Standard—Comments, Responses and Other Changes

Comment: Definition of bicycle helmet. The original proposal defined bicycle helmet as "any headgear marketed as suitable for providing protection from head injuries while riding a bicycle." One comment suggested that the definition of a product should not be in terms of how it is marketed.

Response: The Commission disagrees with this comment. It is important that all products marketed as suitable for providing protection from head injuries while bicycling meet the applicable safety standard. However, the Commission proposes to amend the definition to include not only products specifically marketed for use as a bicycle helmet but also those products that can be reasonably foreseen to be used for that purpose.

Comment: Compliance with third-party standards as compliance with the rule. The Snell Memorial Foundation urged that the following statement be added to the certification portion of the rule that describes a reasonable testing program: "Helmets that are certified by the Snell Memorial Foundation to the

Snell B-95 or Snell N-94 Standards are considered to be in compliance with this regulation."

Response: One of the objectives of the Children's Bicycle Helmet Safety Act of 1994 is to establish a unified bicycle helmet safety standard that is recognized nationally by all manufacturers and consumers. The Commission believes it would be contrary to the intent of the Act to provide that certified conformance to any particular existing voluntary standard is compliance with the mandatory rule.

Allowing third-party certification to a voluntary standard to serve as compliance to the mandatory rule would not adequately deal with the issue of recalls or other corrective actions if defective helmets are nonetheless produced. A third party can only decertify helmets that do not meet its standard and can only request that the responsible firm take appropriate corrective action for previously produced helmets. CPSC, on the other hand, has the authority to order a firm to take corrective actions if necessary and to assess penalties where appropriate. Accordingly, the Commission declines to adopt the language requested by this commenter.

Comment: Multiple-activity helmets. Some commenters recommended that the CPSC include provisions for children's bicycle helmets so that helmets would provide protection in activities in addition to bicycling, such as skateboarding, skating, sledding, and the like. Two commenters recommended that the CPSC bike helmet standard also apply to helmets for roller skating and in-line skating. Other comments stated that the Commission should not delay promulgation of the bike helmet standard while multi-activity issues are explored.

Response: Recent forums on head protection concluded that there is a need to develop helmets that are suitable for use in a number of recreational activities, not just bicycling.⁷ However, the CPSC's authority under the Children's Bicycle Helmet Safety Act of 1994 is to set mandatory requirements for *bicycle* helmets. Establishing criteria for products other than bicycle helmets would require the Commission to follow the procedures and make the findings

⁷ Forum on Head Protection in Recreational Sports, Harborview Injury Prevention and Research Center (February 18, 1994); Chairman's Roundtable, Multi-Activity Helmets, U.S. Consumer Product Safety Commission (September 19, 1994).

prescribed by the CPSA or the Federal Hazardous Substances Act ("FHSA").

In March 1994, Snell established the N-94 Standard For Protective Headgear For Use in Non-Motorized Sports. This standard provides greater head coverage than current bicycle helmet standards, tests for multiple impacts at a single location on the helmet, and tests to see if the helmet will roll off on impact. However, the Commission lacks data that multiple impacts at a single location are a factor in injuries to persons wearing bicycle helmets or that greater helmet coverage is needed for bicycle accidents. Furthermore, the use of an additional anvil in the Snell N-94 test may preclude the use of some current vent designs used in bicycle helmets. The Commission is aware of only a few helmets currently on the market that are certified to this standard.

Activities like roller skating, in-line skating, and skateboarding are typically conducted on the same types of surfaces as bicycling and can generate speeds similar to bicycling. In addition, these other activities do not put the user at a higher height than when using a bicycle. Thus, fall heights can be expected to be similar. It is reasonable to assume that the test requirements in the bicycle helmet regulation would allow the helmet to provide some protection for other activities—such as in-line skating, roller skating and skateboarding—until multiple-activity helmets become widely available. However, the Commission does not have sufficient data on the benefits and costs of additional features directed at injuries incurred other than bicycling to make the findings that would be required by either the CPSA or FHSA. Also, procedures in addition to those required by the Bicycle Helmet Safety Act would have to be followed. The Commission does not want to delay establishment of a mandatory bicycle helmet standard in order to pursue rulemaking for other types of helmets. Accordingly, this proposed regulation only addresses bicycle helmets.

Comment: General construction provisions. Section 1203.5 of the originally proposed mandatory standard included several provisions that addressed general construction characteristics of a bicycle helmet. These provisions specified that helmets shall be designed to reduce the acceleration forces imparted to the wearer's head by an impact and to remain on the wearer's head during impact. It was also specified that helmets shall be constructed not to be harmful or potentially injurious to the wearer. For example, the original

proposal stated that the helmet surface shall not have projections that may increase the likelihood of injury to the rider during an accident. In addition, the original proposal provided that construction materials should be resistant to environmental conditions that may be reasonably expected during helmet use and storage and shall not be harmful to the wearer.

Some commenters on the proposed rule stated that many of the requirements in § 1203.5 are subjective, since they have no performance-related criteria. One respondent suggested that these sections be located in an informative annex rather than in the body of the standard.

Response: Sections 1203.5(a) and (d) of the original proposal—titled "General" and "Materials," respectively—contained no objective performance criteria to establish compliance. Section 1203.5(c)—"Retention System"—was redundant since it merely referenced test requirements elsewhere in the standard. Accordingly, the Commission is eliminating these paragraphs from the revised proposal.

The first proposed standard required that external projections must "readily break away" and internal projections shall be protected by "some means of cushioning." In response to the comments that this language was subjective, the Commission is revising the language to define more objective performance criteria. The revised requirement is that the helmet be examined after impact testing to determine whether there are any rigid internal projections that could contact the wearer's head.

Comment: Children's peak g-value. Some comments recommended that the peak g-value for children be dropped from 300 g to 250 g or 200 g. Some commenters suggested that no change be made in the g-value.

Response: Despite the high incidence of head injury among children, studies addressing mechanisms of injury and recovery are lacking. Therefore, even though children make up the majority of the population at risk for head injury, children's helmets sold on the market today generally are designed to meet the attenuation and absorption criteria established for the adult helmeted-headform drop tests. The criteria for testing and evaluating the performance of helmets have been established primarily on the basis of data derived from injury tolerance studies conducted on adults. This is a matter of some concern, since studies indicate that the type of head injury resulting from blunt

trauma may differ significantly between adults and children.

The skull is the brain's primary protection against blunt force trauma. The properties of the skull change significantly as a child matures. Cranial capacity reaches adult size by 5 years of age. At 18 months, the brain has attained almost 70% of its adult size and, by 5-8 years, it is 90% of adult size.

Most of the head growth beyond the first 5 years involves hardening of the skull and thickening of the soft tissue around the brain. Children appear to be at greater risk of diffuse brain injury because their skulls have a lower degree of calcification, which provides a reduced capacity to absorb an impact. This results in a greater transfer of the kinetic energy from the impact site to the brain tissue.

The differences in the type of head injuries sustained by children and adults should have some bearing on helmet design. Currently, no compensation has been made for the differences between adults and children in head injury tolerance levels regarding the bending strength of the skull.

Current United States bicycle helmet voluntary standards recommend that helmets limit an attenuation impact to below 300 g in order to reduce the risk of severe injury. However, for the reasons described above, this may be inadequate to protect children. Published reports have suggested reducing the g-value for children from 300 g to 150 to 250 g.⁸

A helmet may partially compensate for the flexibility of a child's skull. However, the interior dimensions of the helmet will not perfectly fit the skull. In an accident, point contact is likely to occur between the skull and the helmet, which will tend to flex the child's skull more than an adult's. Accordingly, the Commission concludes that a differential in the g criteria is needed between adults' and children's standards. The Commission proposes to lower the g-value to 250 g. This will provide a substantial extra margin of safety to account for the increased flexibility of children's skulls, without making the criterion so stringent that it is either not cost effective or results in helmets that are so heavy or bulky that their use would be discouraged.

⁸ Corner JP, Whitney CW, O'Rourke N, and Morgan DE. Motorcycle and Bicycle Protective Helmets—Requirements. Dept. of Trans. and Comm., Federal Office of Road Safety, Australia, May 1987. Lane JC. Helmets for Child Bicyclists, Some Biomedical Considerations. Federal Dept. of Transport, Office of Road Safety, Australia, CR 47, 1986.

Comment: Drop mass. Several commenters favored a variable drop mass instead of the originally proposed 5 kg drop mass, which would have been used for testing both adults' and children's helmets. (The helmet's mass is not included in the drop mass.) Some respondents felt a reduced drop mass is especially important for testing young children's helmets. One respondent opposed lowering the drop mass, stating that there is no benefit in different drop masses for each headform.

Response: A 1979 study found that in head-first free fall, a child's body mass and orientation at impact have little influence on head loading (g-forces) during impact.⁹ The study also explains that head loading in adult falls is influenced by a more complex relationship between head mass and body mass. This suggests that the actual head mass of a child is an important factor in determining head loading during impact.

The helmet liner is designed to absorb the energy of impact by deformation, and to deform at force levels below that which would cause head injury. However, children's heads have less mass and their skulls are more flexible than those of adults. Therefore, a child's head may not deform the helmet's foam padding during impact if the foam is designed to protect the heavier adult head. This lack of deformation may result in greater kinetic energy being transferred to a child's brain, possibly resulting in a greater likelihood of intracranial injury. This strongly suggests that children's helmets should be tested with a lower headform mass than helmets for adults.

The Commission's Directorate for Epidemiology and Health Sciences concluded that the head mass of children under the age of 5 years ranges from approximately 2.8 to 3.9 kg. Accordingly, the Commission is proposing a reduced drop assembly mass of 3.90 kg±0.1 kg for testing helmets for children under 5. The lower mass will better represent the head mass of children under 5 years of age than the 5 kg mass specified for testing helmets for older children and adults.

Testing helmets for children under 5 years with a more appropriate mass should lead to helmets that are better designed to accommodate maturational differences of a young child's head. An even lower mass is not feasible with current test rigs, because a drop assembly mass of less than 3.90 kg

would shift the center of gravity on current test equipment enough to potentially influence test results.

Comment: Extent of protection. Current U.S. voluntary bicycle helmet standards, and the originally proposed CPSC standard, specify an extent-of-protection boundary and an impact test line. The extent-of-protection boundary defines the area of the head that must be covered by the helmet. The impact line designates the lowest point on the helmet where the center of the anvil may be aligned for testing. A clearance is specified between the extent-of-protection boundary and the impact line to allow for the imprint of the test anvil.

A number of comments on the proposed standard concerned the extent-of-protection (or extent of coverage) requirements. One commenter stated that the extent-of-protection requirement was subjective since no test is applied in these areas. Some commenters believed the proposed extent-of-protection requirement was design-restrictive, since some helmets have features like rear vents that may rise above the extent of coverage line but nevertheless will provide protection if impacted on the test line.

Response: The Commission believes that a performance test using a single test line and no extent-of-protection requirement is adequate for testing the impact-attenuation capabilities of a helmet. Not requiring specific helmet coverage allows manufacturers the flexibility to include desirable features such as a central rear vent, provided the features do not hinder the helmet's ability to meet the impact requirements if tested anywhere on or above the test line. Accordingly, the Commission has deleted the extent-of-protection line from the revised proposed standard.

Comment: Extended coverage for young children's helmets. A number of commenters favored an extended area of coverage for young children's helmets. However, one commenter suggested that the coverage lines defined in the first CPSC-proposed standard were not practical, since portions of the test line extended lower than the edge of an impact headform.

Response: As noted above, young children's skulls lack the calcification of older children's and adult skulls. This is especially true of children under 5 years old, where the curve of head growth and skull development is steepest. The temporal region (area above and around the ear) is much thinner than other parts of the skull. As a result, a much smaller force at the temporal region can cause a serious injury than at other regions of the skull. Accordingly, the Commission concludes that helmets for children

under 5 years should have a greater area of protection than those for older children and adults.

A recent proposal for infant helmet test lines by the ASTM Headgear Subcommittee Infant/Toddler Working Group specifies a "two-step" test line that is measured directly from the reference plane of the ISO A and ISO E headforms. The Commission considers the proposed ASTM test line appropriate for testing helmets for children under 5 years. The revised test line (Figure 5) provides an increased area of protection, including the temporal area.

Many young children's helmets on the market already provide an area of protection comparable to the revised CPSC proposal, though it is not required by any current U.S. bike helmet standard. The revised CPSC test line is easier to define and mark on a helmet than the first proposed CPSC line, which was referenced from an adjusted basic plane inclined 15 degrees from horizontal. This new test line does not extend lower than the edge of the headform.

Comment: Determining which helmets are for young children. A commenter asked for clarification of how to determine whether helmets are "intended" for children 4 years and under. The concern is that small helmets are often sold to adults with small heads.

Response: Typically, helmets for children are advertised and promoted with children's themes. The Commission will consider relevant factors, such as the design and marketing of a helmet, to determine whether it is intended for young children.

However, it is also important that consumers not mistake adult and older children's helmets that are the same size as helmets for children under 5 years of age as complying with the extra coverage and other special provisions required for helmets intended for children under 5. Therefore, the proposal provides that helmets specifically designed for children under 5 years of age be labeled to read: "Complies with CPSC Safety Standard for Bicycle Helmets for Children Under 5 years."

Comment: Peripheral vision. One commenter recommended revising the peripheral vision requirement to specify clearances of two separate 105° arcs from the center of each eye.

Response: The existing requirement of 105° clearance from the central point K is an established criterion that provides sufficient peripheral vision and allows for helmet protective coverage to the

⁹Mohan D, Bowman B, Snyder RG, and Frost, DR. A Biomechanical Analysis of Head Impact Injuries to Children. *J. Biomechanical Eng.* 101, pp. 250-260, U.S., Nov. 1979.

temporal area of the head. The proposed criterion is consistent with ANSI, ASTM, and Snell bicycle helmet standards, and with the FMVSS 218 motorcycle helmet standard. Therefore, the Commission makes no change to the proposed rule in response to this comment.

Comment: Vertical vision. One commenter suggested that the Commission adopt requirements for a vertical field of vision.

Response: The Commission has no information to indicate that bicycle helmets are posing a risk of injury due to inadequate upward or downward visual clearance. Accordingly, the Commission is not proposing a vertical field of vision requirement.

Comment: Dwell time. Several commenters disagreed with the dwell time specification in the first proposed CPSC standard.

Response: The Commission agrees with these comments, and the impact attenuation requirements are revised to specify only peak g as the evaluation criteria. This change was made because of a lack of scientific evidence to support application of dwell time as a bike helmet evaluation criterion.

Comment: Point loading requirements. Two commenters recommended that the Commission explore requirements to limit localized loads on the head that could be caused by strategically located high-density foam in helmet liners.

Response: The Commission has no information to indicate that some helmet designs may pose a risk of injury due to localized loading. Therefore, the Commission is not adding point loading requirements to the proposed rule at this time.

Comment: Daytime and nighttime conspicuity. Some comments related to possible requirements for helmets to improve a bicyclist's conspicuity in both daytime and nighttime conditions.

Response: Available data do not suggest that requirements to increase the visibility of bicyclists to others would significantly reduce daytime incidents. Data do show an increased risk of injury while bicycling during non-daylight hours.

Commission staff observed informal demonstrations which suggested that reflective material on bike helmets could enhance the conspicuity of a nighttime rider. However, at this time, the Commission lacks information on what requirements might be effective to achieve this goal.

The Commission intends to study this issue further in conjunction with planned work on evaluating the bicycle reflector requirements of CPSC's

mandatory requirements for bicycles. 16 CFR part 1512. After that work is completed, the Commission will decide whether to propose reflectivity requirements for bicycle helmets under the authority of the Children's Bicycle Helmet Safety Act of 1994. The Commission does not intend to delay issuance of the standard proposed in this notice to coincide with any reflectivity requirements that may be issued later.

Comment: Type of test rig. The originally proposed CPSC standard and the current interim mandatory standards allow the use of either a wire- or rail-guided impact test rig. A commenter recommended that the Commission adopt a free-fall test rig that has no rigid connection between the headform and the guide system. The Commission also received a proposal from one respondent to evaluate differences between twin-wire and monorail test rigs through exhaustive comparison testing.

Response: The Commission has no information to indicate that the suggested free-fall rig provides a more reliable test system or that it represents the dynamics of a human head impacting a surface better than other types of impact test equipment. Accordingly, the Commission is not proposing a free-fall test rig.

To avoid the possibility that different results would be obtained with the two types of test rigs, the Commission is specifying only the monorail test rig in the revised mandatory standard. The suggested tests would be helpful only if both test rigs were permitted.

For helmet certification testing, the regulation does not require that the manufacturer follow specifically the procedures of the CPSC standard. Thus, a manufacturer may choose to certify helmets by testing with a wire-guided test rig, provided the manufacturer assures that the helmets will meet the requirements of the CPSC standard when tested on the standard's monorail test rig.

Comment: Dynamic strength of retention system test—spinning rollers. A comment suggested that the "jaw rods" in the strength of retention system test rig should be rotatable.

Response: The requested feature is consistent with provisions in both the ANSI and Canadian standards and should help ensure that the maximum loading is transmitted to the retention system attachment points. Accordingly, the Commission has adopted this suggestion, and the revised proposal states that the "stirrups" that represent the bone structure of the jaw shall be freely spinning cylindrical rollers.

Comment: Dimensions of impact base. Three commenters recommended revising the standard to allow a smaller impact base. The commenters claimed that the dimensions specified in the proposed standard are not consistent with many existing test rigs.

Response: The Commission concludes that there is no known reason to exclude bases with smaller surface dimensions. Therefore, the Commission proposes to reduce the minimum surface area specification from 0.30 m² to 0.10 m². This is consistent with impact base specifications in Snell helmet standards. The minimum mass of the impact base will still be the originally proposed 135 kg.

Comment: Instrument system check procedure. One commenter claimed that the instrument system check procedure specified in the first proposed rule only tests repeatability and not the accuracy of calibration. The commenter recommended that the procedure allow using a test headform, instead of the spherical impactor, for the instrument system check impacts. The commenter also suggested that the instrument system check be performed at least once a week.

Response: The commenter is correct that this instrument system check procedure primarily indicates that the test is producing repeatable results. The Commission's staff, using the procedures proposed in the originally proposed CPSC standard, obtained daily test results on an average of 12 drops of a spherical impactor on a modular elastomer programmer ("MEP") pad for 3 months. These tests yielded peak accelerations that met the originally proposed 389±8g criteria for the specified velocity range. The specific g-level that will be achieved depends on the MEP pad in use.

The Commission agrees that the instrument system check procedure should have greater flexibility to allow other laboratories to conduct testing based on their internal procedures. To help assure that consistent, reproducible data are obtained, the Commission proposes to continue the use of an impactor with a spherical impact surface, rather than impact headforms. The Commission also believes that the system check interval should not be longer than the beginning and end of each test day. The revised procedure, however, is not intended to prevent each laboratory from exercising sound engineering practice in establishing their specific methodology.

Comment: Distance between impacts. A commenter recommends revising the minimum distance between impact sites

from "one fifth the circumference of the helmet" to 120 mm.

Response: The Commission believes that 120 mm allows sufficient distance to minimize the effects of impact site proximity and provides a more straightforward measurement than the original one-fifth circumference criteria. Accordingly, the Commission proposes to adopt this recommendation.

Comment: Impact velocity tolerance. One commenter suggested a change from $\pm 2\%$ to $\pm 5\%$ for the tolerance on impact velocity.

Response: Tests by CPSC staff indicated that helmet impact velocities sometimes fell outside the proposed $\pm 2\%$ tolerance. However, the impact velocities almost always were within $\pm 3\%$ of the specified value. These tests showed that a $\pm 3\%$ velocity tolerance is reasonable to maintain a test procedure that will reliably indicate the equipment is functioning properly. Accordingly, the velocity tolerance for helmet testing has been changed to $\pm 3\%$ in the revised proposal.

Comment: Number of helmets required for testing. Comments were submitted requesting clarification of the number of helmet samples needed if attachments are provided with the helmet and if the helmet fits two headform sizes.

Response: An additional set of five helmets is needed for each additional attachment (e.g., visors or shields), or combinations thereof, sold for use with the helmet. Two additional samples per set are needed if the helmet fits two headform sizes.

Comment: Fit and testing. A comment stated that the standard needed to define "fit" as it relates to the process of selecting a test headform. Another comment provided a definition of "fit" and suggested that the language for selecting a test headform should more clearly explain how a sample set of helmets is divided when a helmet fits two different headform sizes.

Response: Language addressing these concerns, including a definition of "fit," has been added to the revised proposed rule.

Comment: Wet-conditioning. A number of commenters suggested that wet-conditioning by totally immersing the helmet in water is unrealistically severe. These commenters recommended that the Commission consider a water-spray environment.

Response: Commission testing of both immersed and water-sprayed helmets under various time durations showed no consistent trend in resulting peak acceleration levels. The immersion environment has the advantages of being easier to define and of subjecting

the helmet to a uniform conditioning exposure. Since testing showed that these commenters' concerns are unfounded, the Commission is retaining the immersion method of wet-conditioning in the proposed standard. However, additional specifications to standardize the wet environment are included.

Comment: Anvil test schedule. In the originally proposed standard, helmets 1 through 4 would have been tested with the flat and hemispherical anvils and the fifth helmet would be tested with the curbstone anvil. Two commenters suggested that there is no reason for a curbstone anvil impact to be treated differently from the flat and hemispherical anvil impacts.

Response: Each anvil has a unique "imprint" that could stress helmet designs differently. Therefore, the proposed standard has been revised so that each of test helmets 1 through 4 must meet the standard's impact criteria on four impacts, once with each of the three anvils and once with the anvil likely to result in the highest g-value. In the absence of an indication why another anvil would be more stringent, this fourth impact should be made with the anvil that produced the highest g-value in the previous three impacts.

This is consistent with the test schedules of the Snell B-90(S), N-94, and B-95 helmet standards. (Under the revised proposal, the fifth helmet is tested only for positional stability.)

Comment: Helmet straps. A commenter recommended that the test procedure require that all slack be removed from the helmet straps when fastening the helmet to the test headform.

Response: The Commission agrees with this comment and has revised the proposal accordingly.

Comment: Lateral positional stability test. A commenter recommended the addition of a positional stability test in the lateral direction.

Response: The shape of the head is such that a properly fitted helmet is more likely to come off to the front or rear than to the side. Accordingly, the suggested lateral positioning test is unnecessary and not proposed.

Comment: Dynamic v. static-load positional stability test. One commenter suggested that the CPSC consider the static load positional stability test specified in the Canadian Standards Association ('CSA') bicycle helmet standard.

Response: The Commission believes that a dynamic test provides a more rigorous and realistic test of the restraint system, and has not adopted this suggested change.

Comment: Retention system test schedule. Some commenters asked that the CPSC consider a change to the test schedule so that at least one impact attenuation drop per sample would be performed prior to testing the retention system.

Response: CPSC staff testing did not show evidence to warrant a change in the sequence of retention system strength tests and impact tests. Accordingly, the Commission did not make this suggested change.

Comment: Use of a Rubber Pad on the Stop Anvil. One commenter recommended using a rubber pad between the steel drop mass and the stop anvil.

Response: The current ASTM and ANSI bicycle helmet standards do not require a rubber pad on the stop anvil. Based on comparison testing with and without a rubber pad, the Commission believes a rubber pad may produce a somewhat less stringent test. In the absence of any compelling reason to allow a rubber pad, therefore, the Commission has not changed the original proposal in this regard.

Comment: Self-release buckle. One commenter suggested that consideration be given to requirements for a self-release buckle that could be used to prevent strangulation if the helmet becomes caught. The commenter stated that there are now efforts in Europe to develop a test method that would ensure that buckles release or break away when subjected to a load equivalent to the weight of a child.

Response: The Commission has received reports of eight or nine deaths of children in Sweden and Norway that occurred when helmets became caught in trees or playground equipment, causing the child to become suspended by the chin strap. The Commission also has received reports of four nonfatal incidents in the United States since 1990, involving children of ages from 5 through 7 years, that occurred in the same fashion.

However, the Commission is not proposing requirements for a self-release buckle at this time. Considering the frequency and potential severity of head injuries in bicycle accidents, it is important to ensure that the helmet retention strength requirements are not compromised.

Comment: Use labeling. A number of comments concerned what information should be on a bike helmet label to inform consumers of the helmet's intended use. Some commenters favored the "Not For Motor Vehicle Use" label that was first proposed in the CPSC standard. Others felt the helmet should be labeled "For Bicycle Use Only."

Response: Currently, the ANSI and Snell voluntary standards require the label "For Bicycle Use Only." ASTM requires the label "Not for Motor Vehicle Use." The ASTM label was originally proposed because helmets are currently not made specifically for many non-bicycling activities, and people should not be discouraged from using a helmet for such activities by a label that states it is for bicycle use only.¹⁰

Other commenters, however, disagreed. One indicated that labeling "Not for Motor Vehicle Use" would stifle the development of separate helmet standards for other sports by voluntary organizations. The commenter believed that the "Not for Motor Vehicle Use" label suggests that a bicycle helmet is as effective for any non-motorized use as a helmet designed specifically for that activity.

The Commission has no evidence to support the contention that the ASTM label would inhibit the development of voluntary standards for non-motorized activities, and no evidence that a bicycle helmet is inadequate for some of these activities. For this reason, the Commission continues to propose the ASTM label, "Not for Motor Vehicle Use."

Comment: Label language and format. Some commenters suggested that the labels have specific language and format (e.g., the ANSI Warning Format).

Response: The Commission concludes that requiring specific language or format is inappropriate for bicycle helmet labels, because the variety of helmet styles and limited space on the interior of some helmets requires more flexibility in labeling.

Comment: Fit information on box. One commenter recommended that information on how to properly fit a helmet be required on the outside of the box.

Response: Children frequently report uncomfortable fit as a reason for not wearing a helmet all the time. It is reasonable to expect that improper fit was sometimes involved in complaints that helmets are uncomfortable. A label on the box could inform parents, before they buy the helmet, that they need to properly fit it to the child's head. However, the Commission is not aware of any information which indicates that such a label would be any more effective in assuring proper fit in use than the originally proposed instructions, which need not be on the

box. Accordingly, the Commission did not adopt this requested change.

Comment: Age-specific fit instructions. A commenter suggested that instructions on fitting a helmet be age-specific, so that a young child can read them.

Response: The Commission believes that age-specific instructions are unnecessary. The Commission lacks data showing that young children would act on age-specific instructions without urging from their parents. The originally proposed rule requires that the instruction sheet have graphics showing proper fit and position of the helmet. Children who can read may well be able to understand pictures showing proper fit. If not, the involvement of parents will likely be needed to convey the information on how to fit the helmet. Parents reading along with the child and discussing the pictures will likely deliver the message of proper fit.

Comment: Life of helmets. One commenter was concerned that the requirement of § 1203.6(a) that labels be legible for the life of the helmet was indefinite, because the life of a helmet is not known.

Response: Snell N-94 and B-95 helmet standards recommend that helmets be replaced after 5 years, or less if the manufacturer so recommends. The Commission concludes that the manufacturer or importer can determine the life of a particular helmet and assure that the labels will remain legible for that time. However, to make this requirement more definite, the Commission has amended the proposal to state that the labels shall remain legible for the intended design life of the helmet.

Comment: Helmet label—post-impact instructions. Some commenters requested that more direct information be provided about what to do with a helmet that has received an impact. One respondent stated that the current wording—"after receiving an impact, the helmet should be returned to manufacturer or be destroyed and replaced"—is ambiguous.

Response: Damage to a helmet from an impact is not always visible to the user. To describe on a label the circumstances in which helmets can be used again, can be fixed, or should be destroyed, if feasible at all, would make the label excessively wordy and likely to be skimmed or ignored. Therefore, the Commission concludes that the most specific and appropriate label would state that the helmet be returned to the manufacturer or destroyed after impact because any damage may not be visible to the user.

Comment: Neck injury protection. One commenter requested that the Commission include in this Federal Register notice a statement encouraging helmet manufacturers to "undertake the development and marketing of helmets that protect wearers from paralyzing neck injuries as a result of bicycle riding." The commenter referred to a report that indicates that bike helmets reduce the risk of head injury, but do not seem to have any effect in reducing the risk of serious neck injury.

Response: The Commission is aware of some efforts to reduce the risks of serious neck injury to bicyclists and participants in other recreational activities. The Commission always encourages research and development of safety-related devices. The Commission's staff will continue to monitor progress in this area. However, such devices are beyond the scope of this proceeding.

Other changes to the standard:

1. Impact-attenuation test—support assembly mass. The specification that the mass of the support assembly be no greater than 25 percent of the mass of the total drop assembly has been deleted. The boundary on the location for the center of gravity at § 1203.17(a)(3) will adequately limit the mass variance between the support assembly and the headform assembly.

2. Dynamic strength of retention system test—mass of the test rig. The ASTM F1446 standard specifies a support assembly mass in the range of 6 kg to 12 kg (including the drop mass). CPSC considered this range too wide when developing the first CPSC proposed standard and specified a mass of 6 kg with a tight tolerance of ± 0.5 kg. Subsequent consideration of this issue by the ASTM Headgear Subcommittee concluded that the assembly mass, excluding the drop weight, should be specified at 7 kg (11 kg including the drop weight) with a narrow tolerance. It was agreed that this rig applies a rigorous test of retention system strength and provides a system better suited for adapting an electronic displacement transducer to provide an accurate means for measuring elongation. Accordingly, the mass of the test rig has been revised to $11 \text{ kg} \pm 0.5 \text{ kg}$.

3. Dynamic strength of retention system test—deletion of preload ballast procedure. The procedure to place a preload ballast on top of the helmet has been deleted, since the more massive test rig in the revised proposal applies a sufficient preload to the helmet retention system to set the helmet fit padding against the test headform.

¹⁰In fact, despite the "For bicycle use only" label, the U.S. Amateur Confederation of Roller Skating adopted the ANSI and Snell helmet standards years ago for use in competitive roller skating.

4. Children's helmets—age range. The age break for special provisions for children's helmets was originally proposed for "children 4 years of age and under." The Commission has revised this language to "children under 5 years of age." This language clarifies the intent to include children until they reach their fifth birthday.

5. Older children and adults test line. The Commission is proposing a revised test line for adults' and older children's helmets, as shown in Figure 4. The portion of the test line that extends from the front of the headform and through its center portion is essentially the test line specified in the Snell B-90 standard. Compared to the test lines in other U.S. voluntary bike helmet standards to which bike helmets are currently certified, the Snell B-90 test line provides the greatest area of impact protection in the front and central portions of the head.

The rear step in the revised CPSC test line is derived by using a 20 mm clearance from the extent-of-protection boundary specified in the August 15, 1994, CPSC-proposed bike helmet standard. The revised test region provides an acceptable area of head protection while allowing for certain design flexibility.

6. Definition of Helmet Positioning Index ("HPI"). In the originally proposed standard, the HPI is defined as a distance that locates where the brow of the helmet should be positioned on the headform. In the revised proposal, the HPI is defined (§ 1203.4(f)) to be a specified distance from the reference plane (defined at § 1203.4(l) and Figure 3), rather than from the basic plane (defined at § 1203.4(a) and Figures 1 and 2). This change is made because impact headforms are cut away (above the basic plane) at the front brow area, making it difficult to measure for the HPI from the basic plane.

D. Certification Testing and Labeling

General. Section 14(a) of the CPSA, 15 U.S.C. 2063(a), requires that every manufacturer (including importers) and private labeler of a product that is subject to a consumer product safety standard issue a certificate that the product conforms to the applicable standard, and to base that certificate either on a test of each product or on a "reasonable testing program." Subpart B of the proposed Safety Standard for Bicycle Helmets contains these certification requirements.

The originally proposed certification rule. The proposed certification rule would require manufacturers of bicycle helmets that are manufactured 1 year after the issue date of the final standard

to affix permanent labels to the helmets. These labels would be the "certificates of compliance," as that term is used in § 14(a) of the CPSA. In the rule as originally proposed, all helmets would have had a label stating "Complies with CPSC Safety Standard for Bicycle Helmets (16 CFR 1203)". As explained below, the Commission is proposing somewhat different language for this label.

In some instances, the label on the bicycle helmet may not be immediately visible to the ultimate purchaser of the helmet prior to purchase because of packaging or other marketing practices. In those cases, it is proposed to advise consumers that the helmet meets the CPSC standard by a second label that would be on the helmet's container or, if the container is not visible, on the promotional material used in connection with the sale of the bicycle helmet.

The proposed certification label also contains the name and address of the manufacturer or importer, and identifies the production lot and the month and year the product was manufactured. Some of the required information may be in code.

The proposed certification rule requires manufacturers and importers to conduct a reasonable testing program to demonstrate that their bicycle helmets comply with the requirements of the standard. This reasonable testing program may be defined by the manufacturers, but must include either the tests prescribed in the standard or any other reasonable test procedures that assure compliance with the standard.

The originally proposed certification rule provides that the required testing program will test bicycle helmets sampled from each production lot in such a manner that there is a reasonable assurance that, if the bicycle helmets selected for testing meet the standard, all bicycle helmets in the lot will meet the standard.

The rule as originally proposed provided that bicycle helmet importers may rely in good faith on the foreign manufacturer's certificate of compliance, provided that a reasonable testing program has been performed by or for the foreign manufacturer; the importer is a U.S. resident or has a resident agent in the U.S.; and the required test records are kept in the U.S. As explained in section E below, the Commission proposes an exception to the requirement that test records must be kept in the U.S.

Comments, responses, and other changes to the certification testing and labeling requirements.

Comment: Production lot. One commenter stated that the rule should use "frequency of production" rather than the originally proposed "manufacturing lot" method to define a lot. The commenter explained that a manufacturing lot may encompass well over a million helmets if there are no changes in the design and production of a helmet. The commenter further explained that using frequency of production as the basis of the required reasonable testing program would require a firm to test after a specified number of helmets are produced. The commenter believes this would catch any defects more readily.

Another commenter stated that the production lot should be based on a monthly or yearly period, as a production lot could include helmets made well after the qualification testing.

Another commenter stated that the proposed definition of a production lot is unmanageable and may be expensive if a large number of helmets is produced and if there are any variations in the materials or processes in the production of the helmets. The commenter recommends that the definition of production lot be changed to either "sequentially labeled helmets bonded and tested separately, or a continuous production of like models produced in accordance with a quality system ensuring traceability for all component parts." Comment CC94-2-25.

In addition, a commenter stated that CPSC should allow manufacturers flexibility to establish their own recognized quality assurance program, such as Mil Std 105D, ISO 9000, or ASQC.

Response: The proposed rule defines a "production lot" as "a quantity of bicycle helmets from which certain bicycle helmets are selected for testing before certifying the lot." In the proposed regulation, the helmets in a lot must be essentially identical in design, construction, and materials. This definition of a production lot does not require the lot to be a specified number of helmets or a set time interval of helmet production, such as weekly or monthly. However, the definition in the proposed regulation does not prohibit certification based on testing after a specified number of helmets or period of time, provided that changes in the design, construction, or materials of the helmet are not made in that production lot. Firms must define their production lots in such a fashion that samples collected for testing represent all the bicycle helmets in a particular lot.

The firms responsible for certification know their products and manufacturing processes. These firms are in the best

position to define their production lot and set up a reasonable testing program in order to assure that their helmets meet the standard. Furthermore, testing on only a number or time basis could allow changes in the helmets' specifications during a production lot that might cause failing results to go undetected until the specified interval occurs. Accordingly, the Commission is not proposing to require testing after a specified number of helmets or time period of production.

A firm is not restricted in any way from establishing its own quality control program, including programs based on Mil Std. 105D, ISO 9000, or ASQC. Therefore, no change in the proposal is required in this regard.

The Commission believes that the certifying firms can determine, based on their production lot and methods of manufacture, how best to sample their lot in order to insure that the helmets meet the standard.

Comment: Sampling. A commenter stated that the testing program should provide for sampling over the entire production lot in order to discover the production of noncomplying helmets.

Response: Under the proposed rule, there is no requirement that sampling be conducted over the entire production lot. The rule states that the manufacturers and importers may set up their own testing program, provided the program is reasonable. The testing program is to insure that the helmets selected for testing represent all the helmets in the production lot. For the guidance of certifying firms, however, the Commission notes that a reasonable testing program would include both prototype and production testing, to provide reasonable assurance that all of the bicycle helmets in the production lot being tested comply with the requirements of the standard.

Comment: Certification label. A commenter inquired whether the content of the certification label could be divided among more than one label.

Response: The originally proposed regulation did not address whether the placement should be on one label. However, the restricted space inside helmets requires that there be flexibility for the format of the certification labeling.

The Commission's Division of Human Factors believes that the name and address of the manufacturer, private labeler, or importer, where required and not in code, should be on one label. This is so the consumer can associate the address with the name if it is necessary to contact the manufacturer, private labeler, or importer for repair or replacement of the helmet. Also, if it is

too difficult to find the information, consumers are less likely to follow through with repair or replacement of helmets. Accordingly, the Commission is revising the proposal to require that the name and address of firms required to be identified uncoded on the label must be on the same label.

However, the Commission now proposes to allow separate labels for the other required information, including the statement of compliance with the CPSC standard, the production lot, and the date of manufacture.

Comment: Third-party testing. A commenter suggested that certification testing should be conducted by a third party and include off-the-shelf random testing.

Response: Under the proposed rule, testing may be done by the manufacturer or importer or by a third party. Regardless of who performs the test, certifying firms are responsible for insuring compliance with all requirements of the standard. No data are available showing that third-party certification would improve compliance with the standard. Accordingly, there is no reason to change the proposal in that regard.

Comment: Verification by CPSC. A commenter suggested that the quality control testing program, testing equipment, and calibration of the testing equipment should be verified by CPSC.

Response: It would be an inefficient use of Commission resources to conduct either quality control verification or calibration of industry equipment, and the need to do this has not been demonstrated. Accordingly, the proposal is unchanged in this regard.

Comment: Production testing of features unlikely to change. A commenter stated that, once a model is certified, testing of helmets for peripheral vision, labeling, and instructions are unnecessary when performing routine compliance testing.

Response: The proposal allows each firm to establish its own testing program, provided the testing program is reasonable. No specific tests are required. When there have not been any changes in the design of the helmet, the firm may establish simple visual examination of some attributes of helmets. For example, if the manufacturer is assured that there has been no change in the physical dimensions of a helmet, there would be no need to retest the helmet's peripheral vision.

No change to the proposal is required to accommodate this commenter's concern.

Comment: Certification label content—coding of foreign

manufacturer. A commenter complained that the true name of the foreign manufacturer could be coded and not disclosed.

Response: The intent of the certification label is to identify a party that the consumer or the CPSC can contact concerning the safety of a helmet. In addition, consumers need to be able to contact someone in the U.S. for repair or replacement information. Since foreign manufacturers are not subject to this regulation, there is no need for consumers to know the identity of the foreign manufacturer. Accordingly, the importer may code the foreign manufacturer's name. Similarly, a private labeler may code the U.S. manufacturer or both the importer and foreign manufacturer.

The identification of the coded information must be available upon request from the importer or private labeler whose name is required to appear on the certification label. This adequately protects the interests the consumer and the CPSC have in this information. In addition, consumers could be confused if two firms were identified on the label. Accordingly, no change to the proposal is made in this regard.

Comment: Certification label content—age of helmet. A commenter stated that permitting the coding of the product lot number and the date of manufacture denies consumers important information on the age of their helmets, as manufacturers commonly recommend replacing the helmet after 5 years. The commenter contends also that it would be easier for consumers to recognize recalls of helmets identified by dates on the helmets rather than by other codes.

Response: Under the proposed rule, the manufacturer, importer, or private labeler may code the production lot and the date of production. These codes on the helmets should not place an undue burden on the consumer in determining the date of manufacture, as this information can be obtained if necessary.

Manufacturers recommend that helmets be replaced after 5 years of use. The manufacture date or code would not identify the "use" age of the helmet, which relates more to the date of purchase of the helmet.

During recalls, the affected firms will identify the model of the helmet, any codes, where it was sold, and the dates of distribution. A consumer can readily ascertain if his/her helmet is being recalled by examining the model number and the date of manufacture, which may be coded. Having the manufacturing date coded would not

interfere with identifying a recalled helmet. Accordingly, no change in the proposal is needed in this regard.

Comment: Certification label content—date of manufacture, serial number, and test date. One firm wants to provide the date of manufacture, serial number, and test date on the helmet, rather than a production lot.

Response: The proposed regulation requires the production lot and the month and year of manufacture to be identifiable from the label, but does not require or prohibit the serial number or test date. Both the production lot and the time of manufacture may be in code. The test date would not add any information for the consumer. The serial number, however, may serve as a code to identify the production lot and, if so, may be used in its place.

Accordingly, the proposed rule has been revised to state that a serial number may be used in place of a production lot identification if it can serve as a code to identify the production lot.

Comment: Certification label content—telephone number. A commenter contends that the telephone number of the responsible firm should be on the certification label.

Response: A telephone number is not required. This might place a burden on small firms with insufficient staff to handle a large number of calls. The consumer can contact the responsible firm in writing if the need arises.

Other change: Compliance labels. Section 14(a) of the CPSA requires that certifying firms issue a certificate certifying that the product conforms to all applicable consumer product safety standards. 15 U.S.C. 2063(a). Accordingly, the original proposal would have required the label statement "Complies with CPSC Safety Standard for Bicycle Helmets (16 CFR part 1203)".

The Commission wants to guard against the possibility that small adult helmets will be purchased for children. Therefore, the revised proposed standard requires that helmets that do not comply with the requirements for young children's helmets be labeled "Complies with CPSC Safety Standard for Bicycle Helmets for Adults and Children Age 5 and Older (16 CFR 1203)". Helmets intended for children 4 years of age and younger would bear a label stating "Complies with CPSC Safety Standard for Bicycle Helmets for Children Under 5 Years (16 CFR 1203)". Helmets that comply with both standards could be labeled "Complies with the CPSC Safety Standard for Bicycle Helmets for Persons of All Ages", or equivalent language.

E. Recordkeeping

Section 16(b) of the CPSA requires that: [e]very person who is a manufacturer, private labeler, or distributor of a consumer product shall establish and maintain such records, make such reports, and provide such information as the Commission may reasonably require for the purposes of implementing this Act, or to determine compliance with rules or orders prescribed under this Act.

15 U.S.C. 2065(b).

The rule as originally proposed would have required every entity issuing certificates of compliance for bicycle helmets to maintain written records that show the certificates are based on a reasonable testing program. As explained below, the Commission proposes to relax the requirement that the records be kept in written form.

These records were proposed to be maintained for a period of at least 3 years from the date of certification of the last bicycle helmet in each production lot and shall be available to any designated officer or employee of the Commission upon request in accordance with § 16(b) of the CPSA, 15 U.S.C. 2065(b).

Comment: Location of test records. The original proposal required that records be kept by the importer in the U.S. to allow inspection by CPSC staff within 48 hours of a request by an employee of the Commission. A commenter inquired whether test records must be kept in the U.S. in the case of a Canadian firm that is owned by a U.S. firm, if the records are available to the U.S. company upon request.

Response: The situation described by the commenter would achieve the result desired by the Commission. Accordingly, the Commission has revised the proposed regulation to state that if the importer can provide the records to the CPSC staff within the 48-hour time period, the records will be considered kept in the U.S.

Comment: Records on disk. The proposed regulation stated that every person issuing a certificate of compliance for bicycle helmets shall maintain written records that show certificates are based on a reasonable testing program. A commenter requested that the certification test records be allowed to be kept on disk instead of paper.

Response: The Commission agrees with the commenter that firms should be allowed to keep the records on disk, if the records can be made available upon request in an appropriate format. Accordingly, the Commission has

amended the proposal to state that certification test record results may be kept on paper, microfiche, computer disk, or other retrievable media. Where records are kept on computer disk or other retrievable media, the records shall be made available to the Commission upon request on paper copies, or via electronic mail in the same format as paper copies.

F. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities.

The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economics has prepared a preliminary economic assessment of the safety standard for bicycle helmets. The proposed rule would establish performance requirements for bicycle helmets. The vast majority of helmets now sold conform to one (or more) of three existing voluntary standards. The one-time costs associated with the redesign and testing of helmets to the new performance standards are not known. On a per-unit basis, however, costs associated with redesign and testing are expected to be small. The Commission solicits comment on the costs of the redesign and testing of bicycle helmets that would be required by the proposed standard.

The vast majority of manufacturers now use third party testing and monitoring for product liability reasons, and are likely to continue to do so in the future. The proposed standard allows for self certification and monitoring, however, which is substantially less costly than third party testing and monitoring.

The proposed labeling requirement is unlikely to have a significant impact on small firms, since virtually all bicycle helmets now bear a permanent label on their inside surface. Industry sources

report that, given sufficient lead time to modify these labels, any increased cost of labeling would be insignificant.

Accordingly, for the reasons given above, the Commission preliminarily certifies that the proposed Safety Standard for Bicycle Helmets, if promulgated, will not have any significant economic effect on a substantial number of small entities.

G. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed safety standard for bicycle helmets.

The Commission's regulations at 16 CFR 1021.5(c)(1) and (2) state that safety standards and product labeling or certification rules for consumer products normally have little or no potential for affecting the human environment. Preliminary analysis of the potential impact of this proposed rule indicates that the rule is not expected to affect preexisting packaging or materials of construction now used by manufacturers. Existing inventories of finished products would not be rendered unusable, since section 9(g)(1) of the CPSA provides that standards apply only to products manufactured after the effective date. Changes in coverage areas for helmets may require modification or replacement of existing injection molds. However, molds are routinely replaced due to wear or to changes in style, and modified molds could be incorporated in this replacement process. Thus, the quantity of discarded molds attributable to the rule is likely to be small. Especially in view of the statutory 1-year effective date, it is unlikely that significant stocks of current labels would require disposal.

The requirements of the standard are not expected to have a significant effect on the materials used in production or packaging, or on the amount of materials discarded due to the regulation. Therefore, no significant environmental effects are expected from the proposed rule if it is adopted. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

H. Paperwork Reduction Act

As noted above, the requirements proposed below, if issued as a final rule, would require U.S. manufacturers and importers of bicycle helmets to conduct a reasonable testing program to ensure their products comply with the

standard. They are also required to keep records of such testing so that the Commission's staff can verify that the testing was conducted properly. This will enable the staff to obtain information indicating that a company's helmets comply with the standard, without having itself to test helmets. U.S. manufacturers and importers of bicycle helmets would also have to label their products with specified information.

For these reasons, the proposal published below contains "collection of information requirements" subject to the Paperwork Reduction Act of 1995, 15 U.S.C. 3501-3520, Pub. L. 104-13, 109 Stat. 163 (1995). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The control number may be displayed by publication in the Federal Register. Accordingly, the Commission has submitted the proposed collection of information requirements to OMB for review under section 3507(d) of the Paperwork Reduction Act of 1995. The title of the submission is "Safety Standard for Bicycle Helmets—Testing and Recordkeeping Requirements."

The Commission's staff estimates that there are about 30 manufacturers and importers subject to these collection of information requirements. There are an estimated 200 different models of bicycle helmets currently marketed in the U.S.

Industry sources advise the Commission's staff that the time that will be required to comply with the collection of information requirements will be from 100 to 150 hours per model per year. Therefore, the total amount of time required for compliance with these requirements will be 20,000 to 30,000 hours per year. However, these estimates are based on the amount of time that is currently expended in complying with the similar requirements that are in the various voluntary standards. Thus, the net burden of the proposed final collection of information requirements is expected to be insignificant, or at least a small fraction of the total hours given above. The Commission would like to receive comments on the activities and time required to comply with these requirements and how these differ from usual and customary current industry practices, on the accuracy of the Commission's burden estimate, and on how that burden could be reduced.

It is possible that firms will consider some of the records required to be provided to the Commission upon request to be trade secret or other

confidential commercial information. Under section 6(a)(2) of the CPSA, the Commission may not disclose information that contains or relates to a trade secret, or is of a type referred to in 18 U.S.C. 1905 or subject to 5 U.S.C. 552(b)(4), 15 U.S.C. 2055(a)(2). Under this section and 16 CFR 1015.18-.19, persons desiring confidential treatment for information must request that it not be disclosed. If the Commission's staff nevertheless determines that the information may be disclosed because it is not confidential, the person submitting the information will be given written notice at least 10 working days before the information is released. Thus, the submitter has an opportunity to seek judicial review of the Commission's determination before the information is released. Also, see 16 CFR part 1101. These procedures also apply to rulemaking comments for which the commenter seeks confidentiality.

Any person may also submit comments to OMB on these proposed collection of information requirements. OMB is required to make a decision concerning the collections of information contained in the proposed rule between 30 and 60 days after publication. Thus, although comments will be received by OMB until February 5, 1996, a comment to OMB is best assured of having its full effect if OMB receives it by January 5, 1996. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Consumer Product Safety Commission. Persons filing comments with OMB are encouraged to send copies to the Commission's Office of the Secretary, with a caption or cover letter identifying the materials as comments submitted to OMB on the proposed collection of information requirements for bicycle helmets.

List of Subjects in 16 CFR Part 1203

Consumer protection, Bicycles, Incorporation by reference, Infants and children, Safety.

For the reasons given above, the Commission proposes to revise Part 1203 of Title 16 of the Code of Federal Regulations, to read as follows:

PART 1203—SAFETY STANDARD FOR BICYCLE HELMETS

Subpart A—The Standard

- Sec.
- 1203.1 Scope and effective date.
 - 1203.2 Purpose.
 - 1203.3 Referenced documents.
 - 1203.4 Definitions.
 - 1203.5 Construction requirements - projections.
 - 1203.6 Labeling and instructions.

- 1203.7 Samples for testing.
- 1203.8 Conditioning environments.
- 1203.9 Test headforms.
- 1203.10 Selecting the test headform.
- 1203.11 Marking the test line.
- 1203.12 Test requirements.
- 1203.13 Test schedule.
- 1203.14 Peripheral vision test.
- 1203.15 Positional stability test (roll-off resistance).
- 1203.16 Dynamic strength of retention system test.
- 1203.17 Impact attenuation test.
- 1203.18 Reflectivity. [Reserved]

Subpart B—Certification

- 1203.30 Purpose and scope.
- 1203.31 Effective date.
- 1203.32 Definitions.
- 1203.33 Certification testing.
- 1203.34 Product certification and labeling by manufacturers (including importers).

Subpart C—Recordkeeping

- 1203.40 Effective date.
- 1203.41 Recordkeeping requirements.

Subpart D—Bicycle Helmets Manufactured From March 16, 1995, Through Date That Is 1 Year After The Final Rule Is Issued

- 1203.51 Purpose.
- 1203.52 Scope and effective date.
- 1203.53 Interim safety standards.

Figures to Part 1203

Authority: Secs. 201–207, Pub. L. 103–267, 108 Stat. 726–729, 15 U.S.C. 6001–6006.

Subpart A—The Standard

§ 1203.1 Scope and effective date.

This standard describes test methods and defines minimum performance criteria for protective headgear used by bicyclists. The values stated in International System of Units (“SI”) measurements are the standard. The inch-pound values stated in parentheses are for information only. The standard shall become effective 1 year after publication of the final rule and shall apply to all bicycle helmets manufactured after that date. Bicycle helmets manufactured between March 16, 1995, and the date that is 1 year after publication of the final rule, inclusive, are subject to the requirements of Subpart D, rather than this Subpart A.

§ 1203.2 Purpose.

The purpose and basis of this standard is to reduce the likelihood of serious injury and death to bicyclists resulting from impacts to the head, as provided in 15 U.S.C. 6001–6006.

§ 1203.3 Referenced documents.

The following documents are referenced in this standard.

(a) Draft ISO/DIS Standard 6220–1983—Headforms for Use in the Testing of Protective Helmets.¹

(b) Federal Motor Vehicle Safety Standard 218, Motorcycle Helmets.²

(c) SAE Recommended Practice SAE J211 OCT88, Instrumentation for Impact Tests.³

§ 1203.4 Definitions

(a) Basic plane means an anatomical plane that includes the auditory meatuses (the external ear openings) and the inferior orbital rims (the bottom edges of the eye sockets). The ISO headforms are marked with a plane corresponding to this basic plane (see Figures 1 and 2 to this part).

(b) Bicycle helmet means any headgear that either is marketed as, or has a reasonably foreseeable use as, a device intended to provide protection from head injuries while riding a bicycle.

(c) Comfort or fit padding means resilient lining material used to configure the helmet for a range of different head sizes. This padding has no significant effect on impact attenuation.

(d) Coronal plane is an anatomical plane perpendicular to both the basic and midsagittal planes and containing the midpoint of a line connecting the right and left auditory meatuses. The ISO headforms are marked with a transverse plane corresponding to this coronal plane (see Figures 1 and 2).

(e) Field of vision is the angle of peripheral vision allowed by the helmet when positioned on the reference headform.

(f) Helmet positioning index (HPI) is the vertical distance from the brow of the helmet to the reference plane, when placed on a reference headform. The vertical distance shall be specified by the manufacturer for each size of headform the helmet fits.

(g) Midsagittal plane is an anatomical plane perpendicular to the basic plane and containing the midpoint of the line connecting the notches of the right and left inferior orbital ridges and the midpoint of the line connecting the superior rims of the right and left auditory meatuses. The ISO headforms are marked with a longitudinal plane corresponding to the midsagittal plane (see Figures 1 and 2 to this part).

(h) Modular elastomer programmer (MEP) is a cylindrical pad, typically consisting of a polyurethane rubber, used as a consistent impact medium for the systems check procedure.

(i) Preload ballast is a “bean bag” filled with lead shot placed on the helmet to secure its position on the headform. The mass of the preload ballast is 5 kg (11 lb).

(j) Projection is any part of the helmet, internal or external, that extends beyond the faired surface.

(k) Reference headform is a headform used as a measuring device and contoured in the same configuration as one of the test headforms A, E, J, M, and O defined in DRAFT ISO DIS 6220–1983. The reference headform shall include surface markings corresponding to the basic, coronal, midsagittal, and reference planes (see Figures 1 and 2 to this part).

(l) Reference plane is a plane marked on the ISO headforms at a specified distance above and parallel to the basic plane (see Figure 3 to this part).

(m) Retention system is the complete assembly that secures the helmet in a stable position on the wearer’s head.

(n) Shield means optional equipment for helmets that is used in place of goggles to protect the eyes.

(o) Spherical impactor is a 146 mm (5.75 in.) diameter aluminum sphere, with a mass of 4005 ± 5 g (8.83 ± 1.10 lb), that is specifically machined for mounting onto the ball-arm connector of the drop-test assembly. The impactor is used to check the electronic equipment (see § 1203.17).

(p) Test headform is a solid model in the shape of a human head of sizes A, E, J, M, and O as defined in DRAFT ISO/DIS 6220–1983. Headforms used for the impact attenuation test shall be constructed of K–1A magnesium alloy or functionally equivalent metal. The test headforms shall include surface markings corresponding to the basic, coronal, midsagittal, and reference planes (see Figure 2 to this part).

(q) Test region is the area of the helmet, on and above a specified test line, that is subject to impact testing.

(r) Visor (peak) is optional helmet equipment for protection against sun or glare, and is sometimes used as a rock or dirt deflector.

§ 1203.5 Construction requirements—projections.

Any unfaired projection extending more than 7 mm (0.28 in.) from the helmet’s outer surface shall break away or collapse when impacted with forces equivalent to those produced by the applicable impact-attenuation tests in § 1203.17 of this standard. Rigid

¹ Available from American National Standards Institute, 11 W. 42nd St., 13th Floor, New York, NY 10036.

² Available from the Department of Transportation, National Highway Traffic Safety Administration, Office of Vehicle Safety Standards, 400 7th St. S.W., Washington D.C. 20590.

³ Available from Society of Automotive Engineers, 400 Commonwealth Dr., Warrendale, PA 15096.

projections on the inner surface shall not exceed 2 mm (0.08 in.) and shall not make contact with the test headform after testing in accordance with § 1203.17.

§ 1203.6 Labeling and instructions.

(a) Labeling. Each helmet shall be marked so that the following information is legible and easily visible to the user and is likely to remain on the helmet and legible throughout the intended design life of the helmet:

(1) Model designation.

(2) A warning to the user that no helmet can protect against all possible impacts.

(3) A warning that for maximum protection the helmet must be fitted and attached properly to the wearer's head in accordance with the manufacturer's fitting instructions.

(4) A warning to the user that the helmet may, after receiving an impact, be damaged to the point that it is no longer adequate to protect the head against further impacts, and that this damage may not be visible to the user. This label shall also state that a helmet that has sustained an impact should be returned to the manufacturer for competent inspection, or be destroyed and replaced.

(5) A warning to the user that the helmet can be damaged by contact with common substances (for example, certain solvents, cleaners, etc.), and that this damage may not be visible to the user. This label shall also state any recommended cleaning agents and procedures, list any known common substances that damage the helmet, and warn against contacting the helmet with these substances.

(6) The statement "Not For Motor Vehicle Use".

(b) Instructions. Each helmet shall have fitting and positioning instructions, including graphic representation of proper positioning.

§ 1203.7 Samples for testing.

(a) General. Helmets shall be tested in the condition in which they are offered for sale. They must pass all tests, both with and without any attachments that may be offered by the helmet's manufacturer, and with all possible combinations of such attachments.

(b) Number of samples. Five samples of each size for each model and combination of attachments offered for sale are required to test conformance to this standard. If a helmet fits more than one size of test headform, two additional samples are needed for each additional headform size for the testing described in § 1203.10—Selecting the test headform.

§ 1203.8 Conditioning environments.

Helmets shall be conditioned to one of the following environments prior to testing in accordance with the test schedule at § 1203.13. The barometric pressure in all conditioning environments shall be 75 to 110 kPa (22.2 to 32.6 inches of Hg). All test helmets shall be stabilized within this ambient range for at least 4 hours prior to further conditioning and testing. Storage or shipment within this ambient range satisfies this requirement.

(a) Ambient condition. The ambient condition of the test laboratory shall be within 17 °C to 27 °C (63 °F to 81 °F), and 20 to 80 percent relative humidity. The ambient test helmet does not need further conditioning.

(b) Low temperature. The helmet shall be kept at a temperature of -16 °C to -13 °C (3 °F to 9 °F) for 4 to 24 hours prior to testing.

(c) High temperature. The helmet shall be kept at a temperature of 47 °C to 53 °C (117 °F to 127 °F) for 4 to 24 hours prior to testing.

(d) Water immersion. The helmet shall be fully immersed "crown" down in potable water at a temperature of 17 °C to 27 °C (63 °F to 81 °F) to a crown depth of 305 mm±25 mm (12 in.±1 in.) for 4 to 24 hours prior to testing.

§ 1203.9 Test headforms.

The headforms used for testing shall be sizes A, E, J, M, and O, as defined by DRAFT ISO/DIS 6220-1983. Headforms used for impact testing shall be constructed of K-1A magnesium alloy or other functionally equivalent metal and must have no resonant frequencies below 3000 hz.

§ 1203.10 Selecting the test headform.

A helmet shall be tested on the appropriate size(s) of headform(s) on which it fits. Fit means that it is not physically difficult to put the helmet on the headform, and that the helmet's comfort or fit padding is partially compressed. A complete set of five helmets of each size and model shall be tested on the smallest size test headform on which they fit. Two additional helmets shall be tested on each of the larger headforms the helmets fit. Testing on the larger headform(s) will include at least one peripheral vision test, dynamic retention test, positional stability test, and impact attenuation test (complete set of four impacts) using the conditioning environment that produced the highest g value in the impact attenuation tests on the smallest headform the helmet fit.

§ 1203.11 Marking the test line.

Prior to testing, the test line shall be determined for each helmet in the following manner.

(a) Position the helmet on the appropriate headform as specified by the manufacturer's head positioning index (HPI), with the brow parallel to the basic plane. Place a 5-kg (11-lb) preload ballast on top of the helmet to set the comfort or fit padding.

(b) Draw a test line on the outer surface of the helmet coinciding with the intersection of the surface of the helmet with the impact line planes defined from the reference headform as shown in:

(1) Figure 4 to this part for helmets intended for adults and for children 5 years of age and older.

(2) Figure 5 for helmets intended for children under 5 years of age.

(c) The center of the impact sites shall be selected at any point on the helmet on or above the test line.

§ 1203.12 Test requirements.

(a) Peripheral vision. The helmet shall allow unobstructed vision through a minimum of 105° to the left and right sides of the midsagittal plane when measured in accordance with § 1203.14 of this standard.

(b) Positional stability. The helmet shall not release from the test headform when tested in accordance with § 1203.15 of this standard.

(c) Dynamic strength of retention system. The retention system shall remain intact without elongating more than 30 mm (1.2 in.) when tested in accordance with § 1203.16 of this standard.

(d) Impact attenuation criteria. (1) For bicycle helmets intended for adults and children 5 years and older. The peak acceleration of any impact shall not exceed 300 g when the helmet is tested in accordance with § 1203.17 of this standard.

(2) For bicycle helmets intended for children under 5 years. The peak acceleration of any impact shall not exceed 250 g when the helmet is tested in accordance with § 1203.17 of this standard.

§ 1203.13 Test schedule.

(a) One of the set of five helmets shall be tested for peripheral vision in accordance with § 1203.14 of this standard.

(b) Helmet samples 1 through 4 shall be conditioned in the ambient, high temperature, low temperature, and water immersion environments, respectively. Helmet 5 shall be conditioned in the ambient condition.

(c) Testing must begin within 2 minutes after the helmet is removed

from the conditioning environment. The helmet shall be returned to the conditioning environment within 3 minutes after it was removed for a minimum of 2 minutes before testing is resumed. If the helmet is out of the conditioning environment for longer than 3 minutes, it shall be reconditioned for 5 minutes for each minute it is out of the conditioning environment beyond

the allotted 3 minutes before testing is resumed.
 (d) Helmets shall be tested for dynamic strength of the retention system prior to being tested for impact attenuation. Helmets 1 through 4 (conditioned in ambient, high temperature, low temperature, and water immersion environments) shall be tested in accordance with the dynamic retention system strength test at

§ 1203.16. Helmets 1 through 4 shall then be tested in accordance with the impact attenuation tests on the flat, hemispherical, and curbstone anvils in accordance with the procedure at § 1203.17. Helmet 5 (conditioned in an ambient environment) shall be tested in accordance with the positional stability tests at § 1203.15. Table 1203.13 summarizes the test schedule.

TABLE 1203.13.—TEST SCHEDULE

	§ 1203.14 Peripheral vision	§ 1203.15 Positional stability	§ 1203.16 Retention system strength	§ 1203.17 Impact tests—4 im- pacts per helmet
Helmet 1—Ambient	X		X	1 Flat X 1 Hemi. X 1 Curb. X 1 TBD* X
Helmet 2—High Temperature			X	1 Flat X 1 Hemi. X 1 Curb. X 1 TBD* X
Helmet 3—Low Temperature			X	1 Flat X 1 Hemi. X 1 Curb. X 1 TBD* X
Helmet 4—Water Immersion			X	1 Flat X 1 Hemi. X 1 Curb. X 1 TBD* X
Helmet 5—Ambient	X	X		

* To Be Determined. The fourth impact can be on any of the anvils, at the discretion of the test personnel.

§ 1203.14. Peripheral vision test.

Position the helmet on a reference headform in accordance with the HPI and place a 5-kg (11-lb) preload ballast on top of the helmet to set the comfort or fit padding. (Note: Peripheral vision clearance may be determined when the helmet is positioned for marking the test lines.) Peripheral vision is measured horizontally from each side of the midsagittal plane around the point K (see Figure 6 to this part). Point K is located on the front surface of the reference headform at the intersection of the basic and midsagittal planes. The vision shall not be obstructed within 105 degrees on each side of the midsagittal plane from point K.

§ 1203.15 Positional stability test (roll-off resistance).

(a) Test equipment. (1) Headforms. The geometry of the test headforms shall comply with the dimensions of the full chin ISO reference headforms sizes A, E, J, M, and O.
 (2) Test fixture. The headform shall be secured in a test fixture with its vertical axis pointing downward and 45 degrees to the direction of gravity (see Figure 7 to this part). The test fixture shall

permit rotation of the headform about its vertical axis and include means to lock the headform in the face up and face down positions.

(3) Dynamic impact apparatus. A dynamic impact apparatus shall be used to apply a shock load to a helmet secured to a test headform. The dynamic impact apparatus shall allow a 4-kg (8.8-lb) drop weight to slide in a guided free fall to impact a rigid stop anvil (see Figure 7). The entire mass of the dynamic impact assembly, including the drop weight, shall be no more than 5 kg (11 lb).

(4) Strap or cable. A hook and flexible strap or cable shall be used to connect the dynamic impact apparatus to the helmet. The strap or cable shall be of a material having an elongation of no more than 5 mm (0.20 in.) per 300 mm (11.8 in.) when loaded with a 22-kg (48.5 lb) weight in a free hanging position.

(b) Test procedure. (1) Orient the headform so that its face is down, and lock it in that orientation.

(2) Place the helmet on the appropriate size full chin headform in accordance with the HPI and fasten the retention system in accordance with the

manufacturer's instructions. Adjust the straps to remove any slack.

(3) Suspend the dynamic impact system from the helmet by positioning the flexible strap over the helmet along the midsagittal plane and attaching the hook over the edge of the helmet as shown in Figure 7.

(4) Raise the drop weight to a height of 0.6 m (2 ft) from the stop anvil and release it, so that it impacts the stop anvil.

(5) The test shall be repeated with the headform face pointing upwards, so that the helmet is pulled from front to rear.

§ 1203.16 Dynamic strength of retention system test.

(a) Test equipment. (1) ISO headforms without the lower chin portion shall be used.

(2) The retention system strength test equipment shall consist of a dynamic impact apparatus that allows a 4-kg (8.8-lb) drop weight to slide in a guided free fall to impact a rigid stop anvil (see Figure 8). Two cylindrical rollers that spin freely, with a diameter of 12.5±0.5 mm (0.49 in.±0.02 in.) that have a center-to-center distance of 76.0±1 mm (3.0±0.04 in.), shall make up a stirrup that represents the bone structure of the

lower jaw. The entire dynamic test apparatus hangs freely on the retention system. The entire mass of the support assembly, including the 4-kg (8.8-lb) drop weight, shall be 11 kg \pm 0.5 kg (24.2 lb \pm 1.1 lb).

(b) Test procedure. (1) Place the helmet on the appropriate size headform on the test device according to the HPI. Fasten the strap of the retention system under the stirrup.

(2) Mark the pre-test position of the retention system, with the entire dynamic test apparatus hanging freely on the retention system.

(3) Raise the 4-kg (8.8-lb) drop weight to a height of 0.6 m (2 ft) from the stop anvil and release it, so that it impacts the stop anvil.

(4) Record the maximum elongation of the retention system during the impact. A marker system or a displacement transducer, as shown in Figure 8, are two methods of measuring the elongation.

§ 1203.17 Impact attenuation test.

(a) Test instruments and equipment.

(1) Measurement of impact attenuation. Impact attenuation is determined by measuring the acceleration of the test headform during impact. Acceleration is measured with a uniaxial accelerometer that is capable of withstanding a shock of at least 1000 g. The helmet is secured onto the headform and dropped in a guided free fall, using a monorail test apparatus (see Figure 9), onto an anvil fixed to a rigid base. The base shall consist of a solid mass of at least 135 kg (298 lb), the upper surface of which shall consist of a steel plate at least 12 mm (0.47 in.) thick and having a surface area of at least 0.10 m² (1.08 ft²).

(2) Accelerometer. A uniaxial accelerometer is mounted at the center of gravity of the test headform, with the sensitive axis aligned within 5 degrees of vertical when the test headform is in the impact position. The acceleration data channel and filtering shall comply with SAE Recommended Practice J211 OCT88, Instrumentation for Impact Tests, Requirements for Channel Class 1000.

(3) Headform and drop assembly—centers of gravity. The center of gravity of the test headform is located at the center of the mounting ball on the support assembly and lies within an inverted cone with its axis vertical, and forming a 10 degree included angle with the vertex at the point of impact. The location of the center of gravity of the drop assembly (combined test headform and support assembly) must meet FMVSS 218 S7.1.8. The center of gravity of the drop assembly lies within the rectangular volume bounded by $x =$

-6.4 mm (-0.25 in.), $x = 21.6$ mm (0.85 in.), $y = 6.4$ mm (0.25 in.), and $y = -6.4$ mm (-0.25 in.), with the origin located at the center of gravity of the test headform. The rectangular volume has no boundary along the z-axis. The x-y-z axes are mutually perpendicular and have positive or negative designations in accordance with the right-hand rule. The origin of the coordinate axes is located at the center of the mounting ball on the support assembly. The x-y-z axes of the test headform assembly on monorail impact-test equipment are oriented as follows: From the origin, the x-axis is horizontal with its positive direction going toward and passing through the vertical centerline of the monorail. The positive z-axis is downward. The y-axis also is horizontal, and its direction is decided by the z- and x-axes, using the right-hand rule. See Figure 10 for an overhead view of the x-y boundary of the location of the center of gravity.

(4) Drop assembly. The center of gravity of the headform shall be at the center of the mounting ball.

(i) Mass of the drop assembly for testing helmets for adults and children 5 years of age and older. The combined mass of the instrumented test headform and support assembly (excluding the test helmet) for the impact test shall be 5.0 \pm 0.1 kg (11.00 \pm 0.22 lb).

(ii) Mass of the drop assembly for testing helmets for children under 5 years. The combined mass of the instrumented test headform (ISO A or ISO E) and support assembly (excluding the test helmet) for the impact test shall be 3.9 \pm 0.1 kg (8.60 \pm 0.22 lb).

(5) Impact anvils. Impact tests shall be performed against the three different anvils described below. All of the anvils shall be constructed of steel and shall be solid (i.e., without internal cavities).

(i) Flat Anvil. The flat anvil shall have a flat surface area with an impact face having a minimum diameter of 125 mm (4.92 in.) and shall be at least 24 mm (0.94 in.) thick (see Figure 11).

(ii) Hemispherical anvil. The hemispherical anvil shall have an impact surface with a radius of 48 \pm 1 mm (1.89 \pm 0.04 in.). The profile of the impact surface shall be one half the surface of a sphere (see Figure 12).

(iii) Curbstone anvil. The curbstone anvil shall have two flat faces making an angle of 105 degrees and meeting along a striking edge with a radius of 15 mm \pm 0.5 mm (0.59 \pm 0.02 in.). The height of the curbstone anvil shall not be less than 50 mm (1.97 in.), and the length shall not be less than 200 mm (7.87 in.) (see Figure 13).

(b) Test Procedure. (1) Instrument system check. The impact-attenuation

test instrumentation shall be checked before and after each series of tests (at least at the beginning and end of each test day) by dropping an impactor with a spherical impact surface onto an elastomeric test medium (MEP). The impactor shall be dropped onto the MEP at a specified impact velocity (\pm 2% of a central value) that is representative of helmet testing drop heights. Before conducting a series of drops, the center vertical axis of the accelerometer (see § 1203.17(a)(2)) shall be aligned with the geometric center of the MEP pad. Six impacts, at intervals of 75 \pm 15 seconds, shall be performed at the beginning and end of the day. The first three impacts at the beginning and end of the day shall be considered warm-up drops and shall be discarded from the series. The test parameters selected at each laboratory shall produce impact accelerations shown to be repeatable within \pm 2% of a central value.

(2) Impact sites. Each of helmets 1 through 4 (one helmet for each conditioning environment) shall impact at four different sites, one impact on the flat anvil, one impact on the hemispherical anvil, one impact on the curbstone anvil, and one impact on an anvil chosen at the discretion of the test personnel.⁴ The center of any impact may be on or anywhere above the test line, provided it is at least 120 mm (4.72 in), measured on the surface of the helmet, from any prior impact center. Rivets and other mechanical fasteners, vents, and any other helmet feature within the test region are valid test sites.

(3) Impact velocity. The helmet shall be dropped onto the flat anvil from a theoretical drop height of 2 meters (6.56 ft) to achieve an impact velocity of 6.2 m/s \pm 3% (20.34 ft/s \pm 3%). The helmet shall be dropped onto the hemispherical and curbstone anvils from a theoretical drop height of 1.2 meters (3.94 ft) to achieve an impact velocity of 4.8 m/s \pm 3% (15.75 ft/s \pm 3%). The impact velocity shall be measured during the last 40 mm (1.57 in) of free-fall for each test.

(4) Helmet position. Prior to each test, the helmet shall be positioned on the test headform in accordance with the HPI. The helmet shall be secured so that it does not shift position prior to impact. The helmet retention system shall be secured in a manner that does not interfere with free-fall or impact.

⁴The intent of this requirement is that the fourth impact will be on the anvil likely to result in the highest g-value. In the absence of an indication why another anvil would be more stringent, this fourth impact should be made with the anvil that produced the highest g-value in the previous three impacts.

(5) Data. Record the maximum acceleration in g's during impact.

§ 1203.18 Reflectivity. [Reserved]

Subpart B—Certification

§ 1203.30 Purpose and scope.

(a) Purpose. Section 14(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2063(a), requires every manufacturer (including importers) and private labeler of a product which is subject to a consumer product safety standard to issue a certificate that the product conforms to the applicable standard. Section 14(a) further requires that the certificate be based either on a test of each product or on a "reasonable testing program." The purpose of this subpart is to establish requirements that manufacturers and importers of bicycle helmets subject to the Safety Standard for Bicycle Helmets (Subpart A of this Part 1203) shall issue certificates of compliance in the form specified.

(b) Scope. The provisions of this subpart apply to all bicycle helmets that are subject to the requirements of the Safety Standard for Bicycle Helmets.

§ 1203.31 Effective date.

Any bicycle helmet manufactured more than 1 year after publication of a final rule must meet the standard and must be certified as complying with the standard in accordance with this Subpart B.

§ 1203.32 Definitions.

The following definitions shall apply to this subpart:

(a) Foreign manufacturer means an entity that manufactured a bicycle helmet outside the United States.

(b) Manufacturer means the entity that either manufactured a helmet in the United States or imported a helmet manufactured outside the United States.

(c) Private labeler means an owner of a brand or trademark that is used on a bicycle helmet subject to the standard and which is not the brand or trademark of the manufacturer of the bicycle helmet, provided the owner of the brand or trademark caused, authorized, or approved its use.

(d) Production lot means a quantity of bicycle helmets from which certain bicycle helmets are selected for testing prior to certifying the lot. All bicycle helmets in a lot must be essentially identical in those design, construction, and material features that relate to the ability of a bicycle helmet to comply with the standard.

(e) Reasonable testing program means any tests which are identical or equivalent to, or more stringent than, the tests defined in the standard and

which are performed on one or more bicycle helmets selected from the production lot to determine whether there is reasonable assurance that all of the bicycle helmets in that lot comply with the requirements of the standard.

§ 1203.33 Certification testing.

(a) General. Manufacturers, as defined in § 1203.32(a), shall conduct a reasonable testing program to demonstrate that their bicycle helmets comply with the requirements of the standard.

(b) Reasonable testing program. This paragraph provides guidance for establishing a reasonable testing program.

(1) Manufacturers and importers may define their own reasonable testing programs. Reasonable testing programs may, at the option of manufacturers and importers, be conducted by an independent third party qualified to perform such testing programs. However, manufacturers, as defined in § 1203.32(a), are responsible for insuring compliance with all requirements of this standard.

(2) To conduct a reasonable testing program, the bicycle helmets shall be divided into production lots. Sample bicycle helmets from each production lot shall be tested in accordance with the reasonable testing program. Whenever there is a change in parts, suppliers of parts, or production methods that could affect the ability of the bicycle helmet to comply with the requirements of the standard, the manufacturer shall establish a new production lot for testing.

(3) The Commission will test for compliance with the standard by using the standard's test procedures. However, a reasonable testing program need not be identical to the tests prescribed in the standard.

(4) If the reasonable testing program shows that a bicycle helmet may not comply with one or more requirements of the standard, no bicycle helmet in the production lot can be certified as complying until all noncomplying bicycle helmets in the lot have been identified and destroyed or altered by repair, redesign, or use of a different material or components to the extent necessary to make them conform to the standard.

(5) The sale or offering for sale of a bicycle helmet that does not comply with the standard is a prohibited act and a violation of § 19(a) of the CPSA (15 U.S.C. 2068(a)), regardless of whether the bicycle helmet has been validly certified.

§ 1203.34 Product certification and labeling by manufacturers (including importers).

(a) Form of permanent label of certification. Manufacturers, as defined in § 1203.32(a), shall issue certificates of compliance for bicycle helmets manufactured after the effective date of the standard in the form of a legible and readily visible label which can reasonably be expected to remain on the bicycle helmet and legible for the intended design life of the helmet. Such labeling shall be deemed to be a certificate of compliance, as that term is used in § 14 of the CPSA, 15 U.S.C. 2063.

(b) Contents of certification label. The certification labels required by this section shall contain the following:

(1) The statement "Complies with CPSC Safety Standard for Bicycle Helmets for Adults and Children Age 5 and Older (16 CFR 1203)" or "Complies with CPSC Safety Standard for Bicycle Helmets for Children Under 5 Years (16 CFR 1203)", as appropriate (for a helmet that meets the criteria for both an adult helmet and a helmet for children under age 5, the label may state "Complies with the CPSC Safety Standard for Bicycle Helmets for Persons of All Ages", or equivalent language);

(2) The name of the U.S. manufacturer or importer responsible for issuing the certificate;

(3) The address of the U.S. manufacturer or importer responsible for issuing the certificate or, if the name of a private labeler is on the label, the address of the private labeler;

(4) The name and address of the foreign manufacturer, if the helmet was manufactured outside the United States;

(5) An identification of the production lot; and

(6) The month and year the product was manufactured.

(c) Coding. (1) The information required by paragraphs (b) (4) through (6) of this section may be in code, provided:

(i) the person or firm issuing the certificate maintains a written record of the meaning of each symbol used in the code, and

(ii) the record shall be made available to the distributor, retailer, consumer, and Commission upon request.

(2) A serial number may be used in place of a production lot identification on the helmet if it can serve as a code to identify the production lot. If a bicycle helmet is manufactured for sale by a private labeler, and if the name of the private labeler is on the certification label, the name of the manufacturer or importer issuing the certificate, and the name and address of any foreign

manufacturer, may also be in such a code.

(d) Placement of the label(s). The information required by paragraphs (b) (2) through (3) must be on one label, unless allowed to be in code. The other required information may be on separate labels. The label(s) required by this section must be affixed to the bicycle helmet. If the label(s) are not immediately visible to the ultimate purchaser of the bicycle helmet prior to purchase because of packaging or other marketing practices, a second label is required. That label shall state, as appropriate, "Complies with CPSC Safety Standard for Bicycle Helmets for Adults and Children Age 5 and Older", or "Complies with CPSC Safety Standard for Bicycle Helmets for Children Under 5 Years". The additional label must appear on the container or, if the container is not visible before purchase, on the promotional material used with the sale of the bicycle helmet. (For a helmet that meets the criteria for both an adult helmet and a helmet for children under age 5, the label may state "Complies with the CPSC Safety Standard for Bicycle Helmets for Persons of All Ages", or equivalent language.)

(e) Additional provisions for importers.

(1) General. The importer of any bicycle helmet subject to the standard in Subpart A of this Part 1203 must issue the certificate of compliance required by § 14(a) of the CPSA and this section.

(i) If a reasonable testing program meeting the requirements of this subpart has been performed by or for the foreign manufacturer of the product, the importer may rely in good faith on such tests to support the certificate of compliance provided:

(A) the importer is a resident of the United States or has a resident agent in the United States,

(B) the records of such tests required by § 1203.41 of Subpart C of this part are maintained in the United States, and

(C) such records are available to the Commission upon request to the importer.

(ii) Test records may be maintained outside of the United States if they will be provided to the Commission within 48 hours of a request for the records.

(2) Responsibility of importer. If the importer relies on tests by the foreign manufacturer to support the certificate of compliance, the importer shall—in addition to complying with paragraph (e)(1) of this section—examine the records supplied by the manufacturer to determine that they comply with § 1203.41 of Subpart C of this part.

Subpart C—Recordkeeping

§ 1203.40 Effective date.

The recordkeeping requirements in this subpart are effective [1 year after publication of the final rule] and apply to bicycle helmets manufactured after that date.

§ 1203.41 Recordkeeping requirements.

(a) General. Every person issuing certificates of compliance for bicycle helmets subject to the standard in Subpart A of this part shall maintain records which show that the certificates are based on a reasonable testing program. The records shall be maintained for a period of at least 3 years from the date of certification of the last bicycle helmet in each production lot. These records shall be available, upon request, to any designated officer or employee of the Commission, in accordance with § 16(b) of the CPSA, 15 U.S.C. 2065(b).

(b) Contents of records. Complete test records shall be maintained. Records shall contain the following information.

- (1) An identification of the bicycle helmets tested;
 - (2) An identification of the production lot;
 - (3) The results of the tests, including the precise nature of any failures;
 - (4) A description of the specific actions taken to address any failures;
 - (5) A detailed description of the tests;
 - (6) The manufacturer's name and address;
 - (7) The model and size of each helmet tested;
 - (8) Identifying information for each helmet tested, including the production lot for each helmet, and the environmental condition under which each helmet was tested;
 - (9) The temperatures in each conditioning environment, and the relative humidity and temperature of the laboratory;
 - (10) The peripheral vision clearance;
 - (11) A description of any failures to conform to any of the labeling and instruction requirements;
 - (12) Performance impact results, stating the location of impact, type of anvil used, velocity prior to impact, and maximum acceleration measured in g's;
 - (13) The results of the positional stability test;
 - (14) The results of the dynamic strength of retention system test;
 - (15) The name and location of the test laboratory;
 - (16) The name of the person(s) who performed the test;
 - (17) The date of the test; and
 - (18) The system check results.
- (c) Format for records. The records required to be maintained by this

section may be in any appropriate form or format that clearly provides the required information. Certification test results may be kept on paper, microfiche, computer disk, or other retrievable media. Where records are kept on computer disk or other retrievable media, the records shall be made available to the Commission on paper copies, or via electronic mail in the same format as paper copies, upon request.

Subpart D—Bicycle Helmets Manufactured From March 16, 1995, Through Date That Is 1 Year After the Final Rule Is Issued

§ 1203.51 Purpose and basis.

The purpose and basis of this rule is to protect bicyclists from head injuries by ensuring that bicycle helmets comply with the requirements of appropriate existing voluntary standards, as provided in 15 U.S.C. 6004(a).

§ 1203.52 Scope and effective date.

(a) Bicycle helmets manufactured after March 16, 1995, through the date that is 1 year after issuance of the final standard (Subparts A, B, and C) shall comply with the requirements of one of the standards specified in § 1203.53. This requirement shall be considered a consumer product safety standard issued under the Consumer Product Safety Act.

(b) The term "bicycle helmet" is defined at § 1203.4(b).

(c) These interim mandatory safety standards will not apply to bicycle helmets manufactured after the effective date of the final bicycle helmet standard.

§ 1203.53 Interim safety standards.

(a) Bicycle helmets must comply with one or more of the following standards, which are incorporated herein by reference:

- (1) American National Standards Institute (ANSI) standard Z90.4-1984, Protective Headgear for Bicyclists,
- (2) ASTM standards F 1447-93 or F 1447-94, Standard Specification for Protective Headgear Used in Bicycling, incorporating the relevant provisions of ASTM F 1446-93 or ASTM F 1446-94, Standard Test Methods for Equipment and Procedures Used in Evaluating the Performance Characteristics of Protective Headgear, respectively,
- (3) Canadian Standard Association standard, Cycling Helmets—CAN/CSA—D113.2-M89,
- (4) Snell Memorial Foundation (Snell) 1990 Standard for Protective Headgear for Use in Bicycling (designation B-90),
- (5) Snell 1990 Standard for Protective Headgear for Use in Bicycling, including

March 9, 1994 Supplement (designation B-90S),

(6) Snell 1994 Standard for Protective Headgear for Use in Non-Motorized Sports (designation N-94), or

(7) Snell 1995 standard for Protective Headgear for Use with Bicycles B-95.

(b) 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 of the standards may be obtained as follows. Copies of the ANSI Z90.4

standard are available from: American National Standards Institute, 11 W. 42nd Street, 13th Floor, New York, NY 10036. Copies of the ASTM standards are available from: ASTM, 1916 Race Street, Philadelphia, PA 19103. Copies of the Canadian Standards Association CAN/CSA-D113.2-M89 standard are available from: CSA, 178 Rexdale Boulevard, Rexdale (Toronto), Ontario, Canada, M9W 1R3. Copies of the Snell standards are available from: Snell

Memorial Foundation, Inc., P.O. Box 493, 7 Flowerfield, Suite 28, St. James, New York 11780. Copies may be inspected at the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814, or at the Office of the Federal Register, 800 N. Capitol Street NW, Room 700, Washington, DC.

Figures to Part 1203

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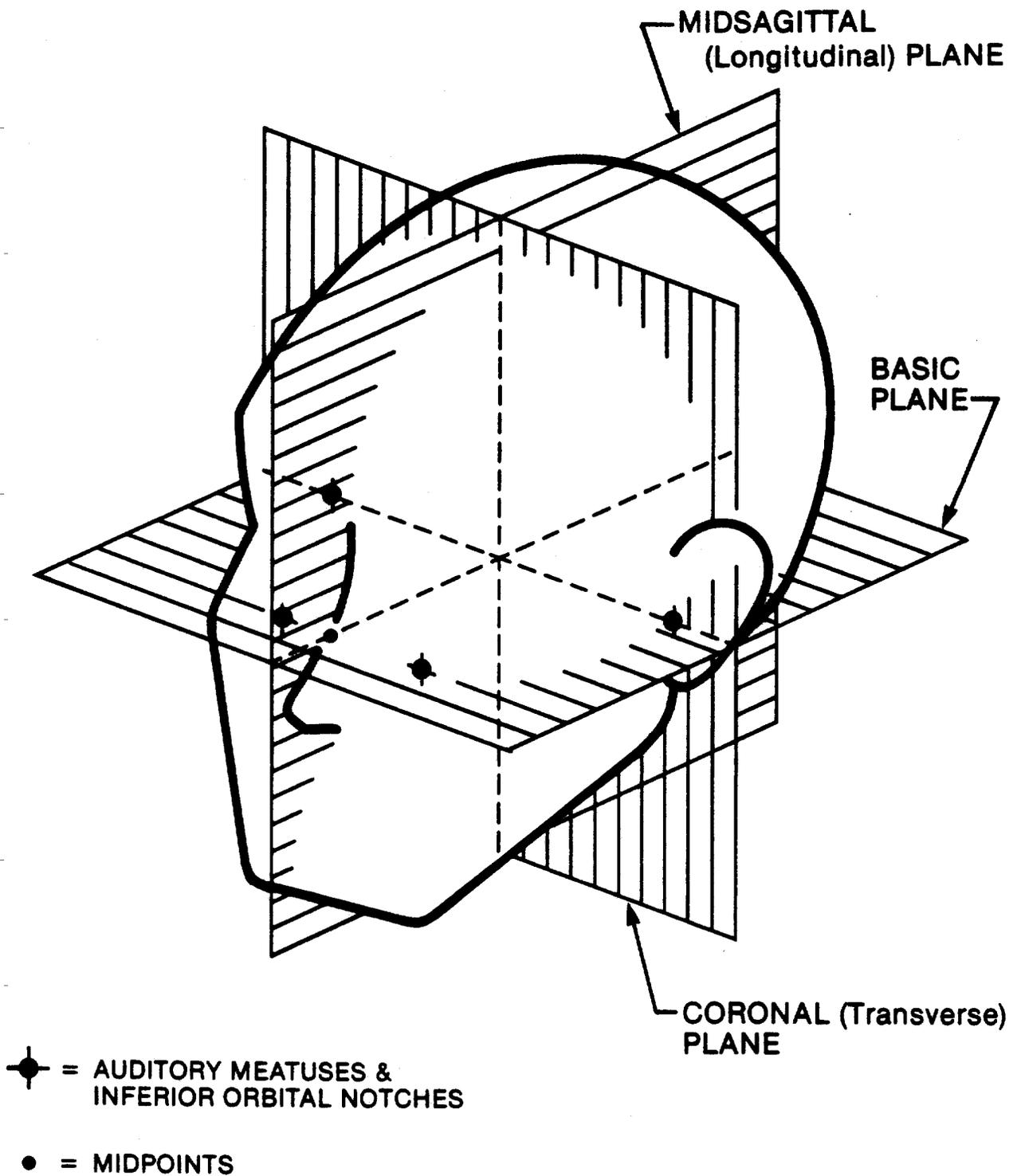


Figure 1. Anatomical Planes

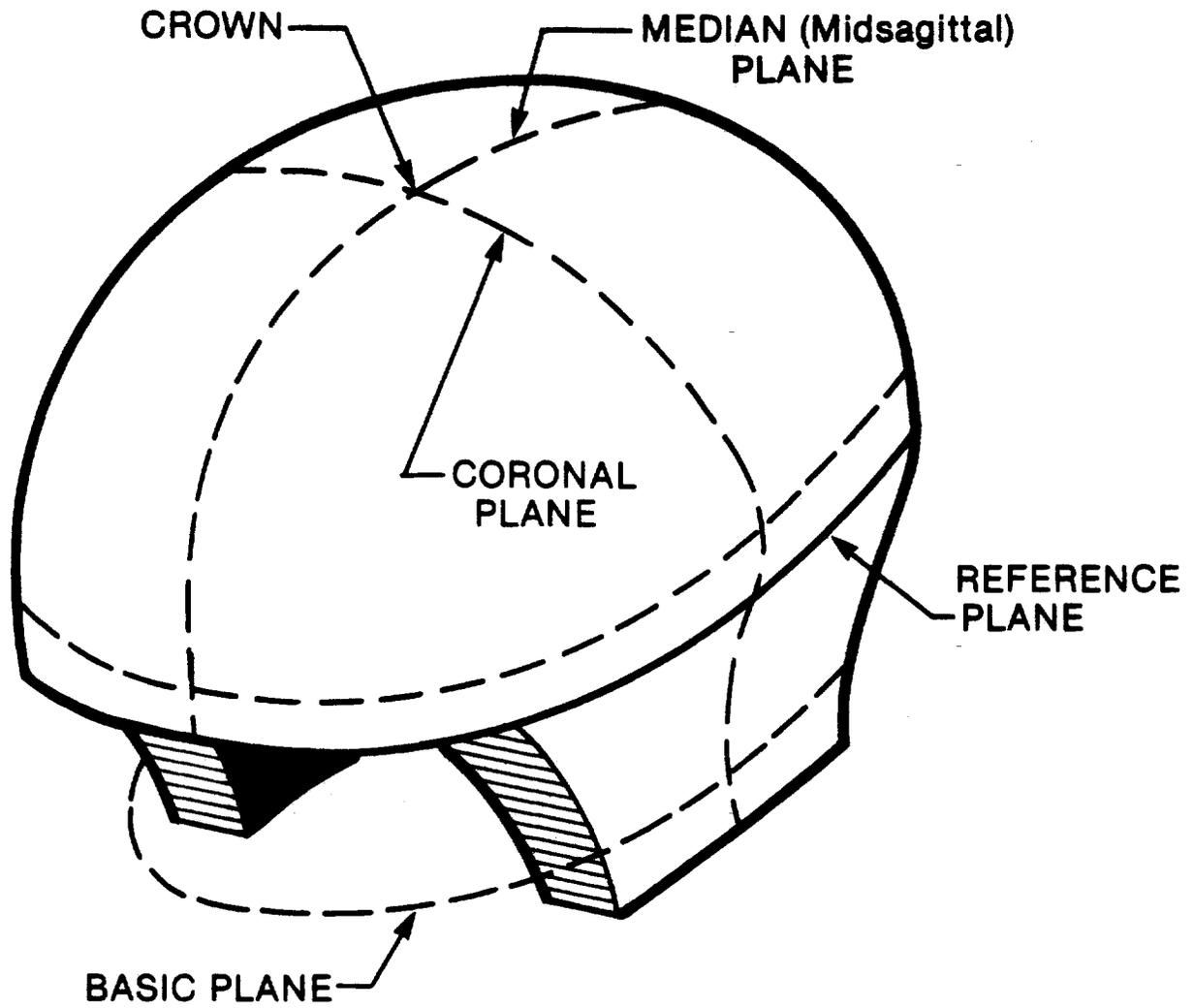
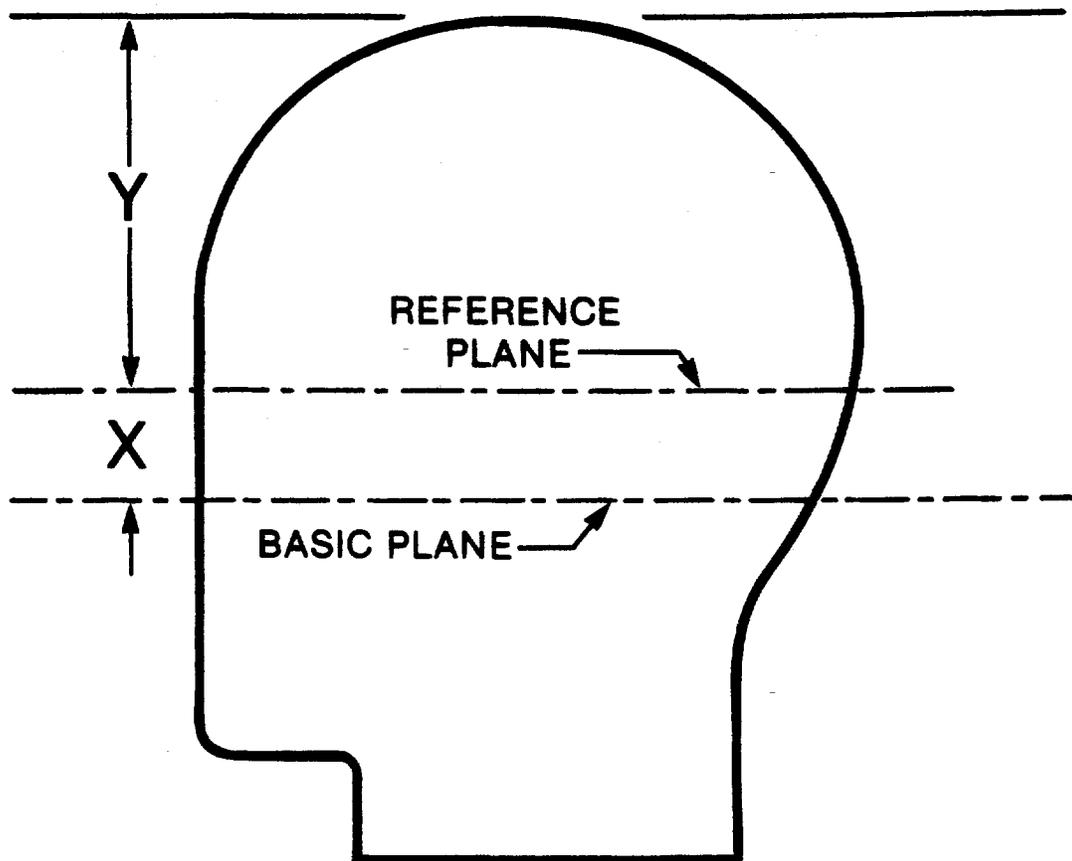


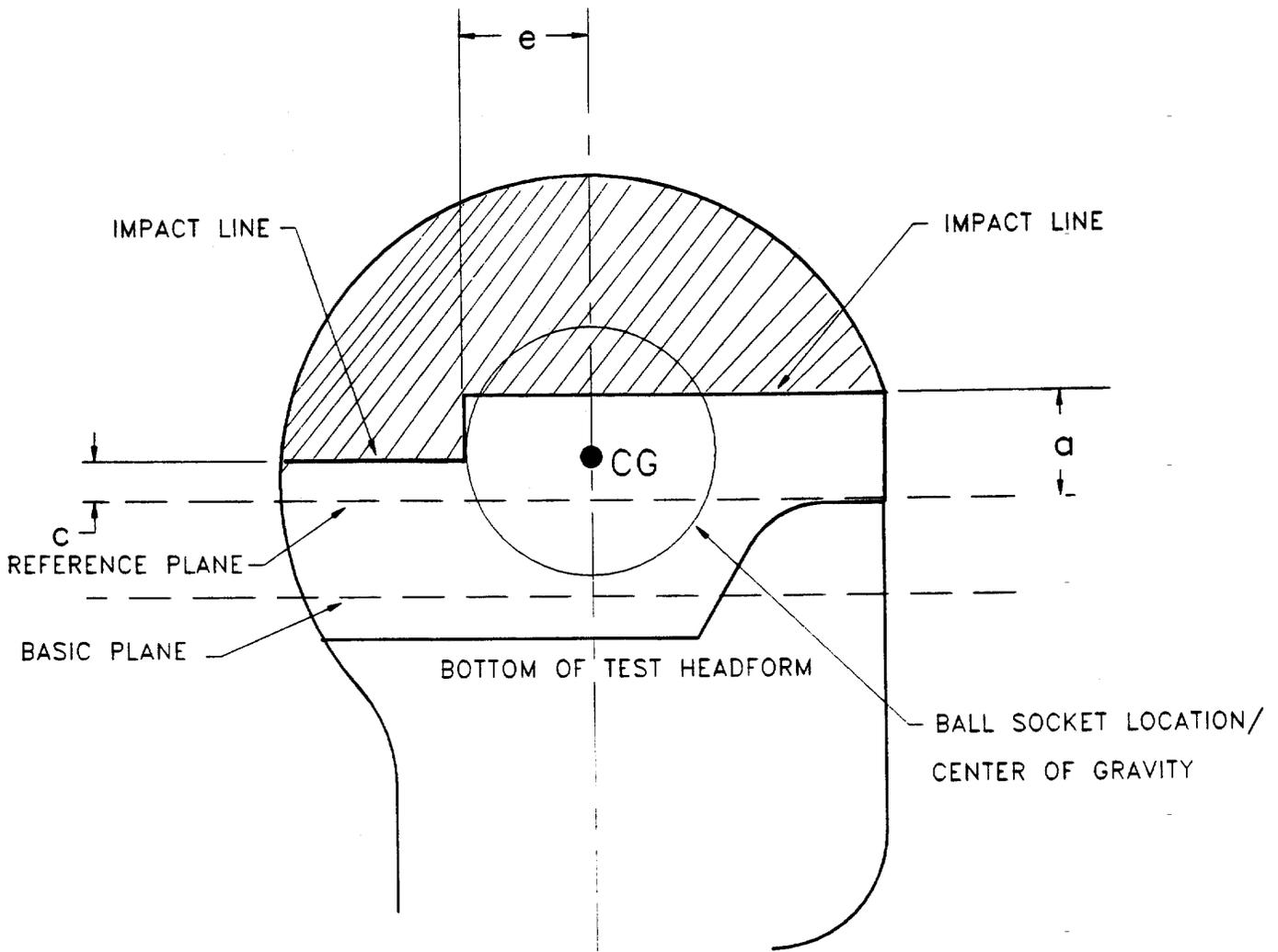
Figure 2. ISO Headform-Basic, Reference, and Median Planes



HEADFORM	SIZE	X	Y
A	500	24	90
E	540	26	96
J	570	27.5	102.5
M	600	29	107
O	620	30	110

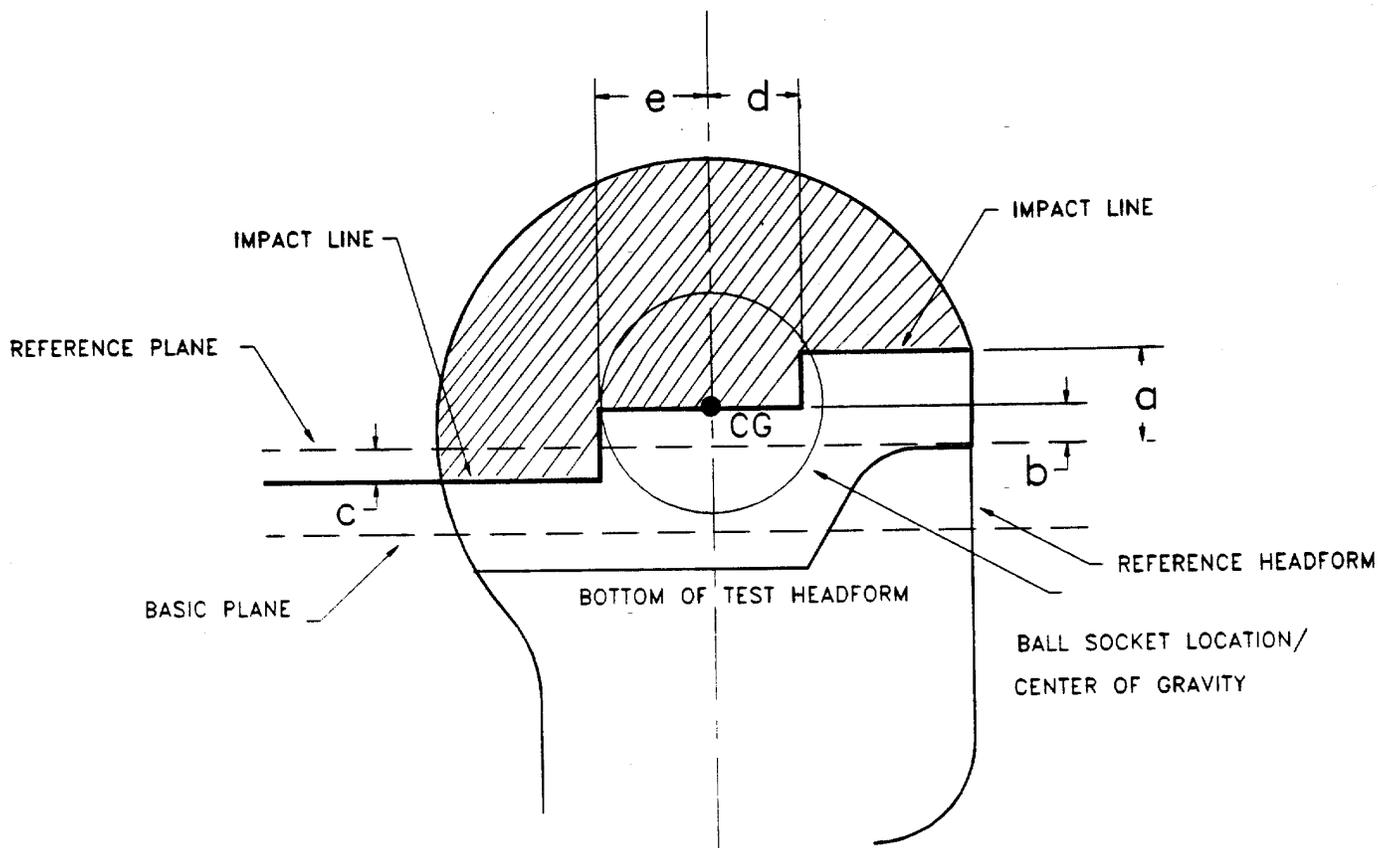
DIMENSIONS IN MILLIMETERS

Figure 3. Location of Reference Plane



HEADFORM	DIMENSIONS mm(in)		
	a	c	e
ISO A	38 (1.49)	27 (1.06)	49 (1.93)
ISO E	39 (1.54)	27 (1.06)	52 (2.05)
ISO J	41 (1.61)	27 (1.06)	54 (2.13)
ISO M	41 (1.61)	27 (1.06)	55 (2.16)
ISO O	42 (1.65)	27 (1.06)	56 (2.20)

Figure 4. Location of Test Lines for Helmets Intended for Persons Five (5) Years of Age and Older.



HEADFORM	DIMENSIONS mm (in)				
	a	b	c	d	e
ISO A	30 (1.18)	12.7 (0.50)	15 (0.59)	25 (0.98)	30 (1.18)
ISO E	32 (1.26)	12.7 (0.50)	16 (0.63)	27 (1.06)	32 (1.26)

Figure 5. Location of Test Lines for Helmets Intended for Children Under Five (5) Years of Age

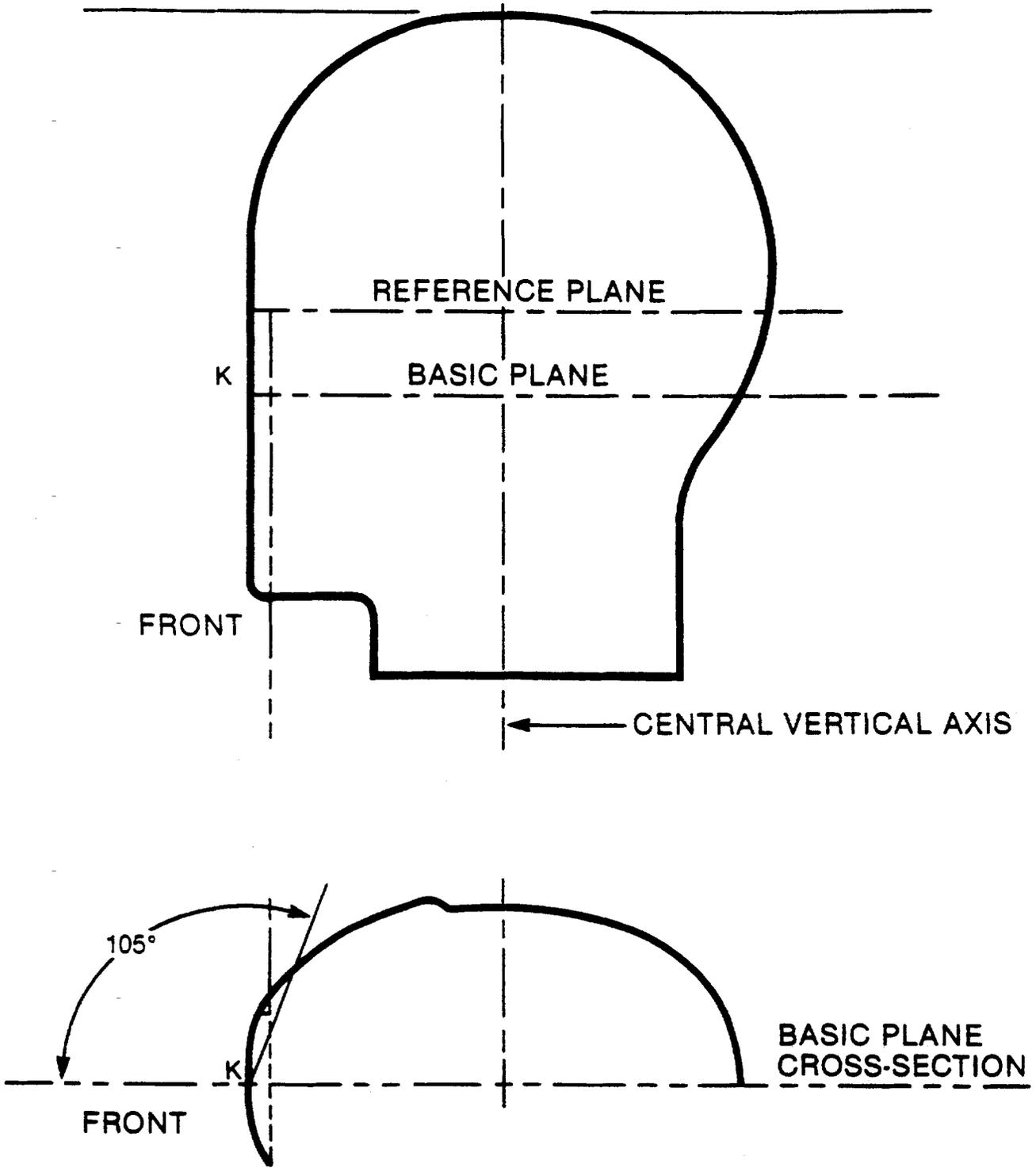


Figure 6. Field of Vision

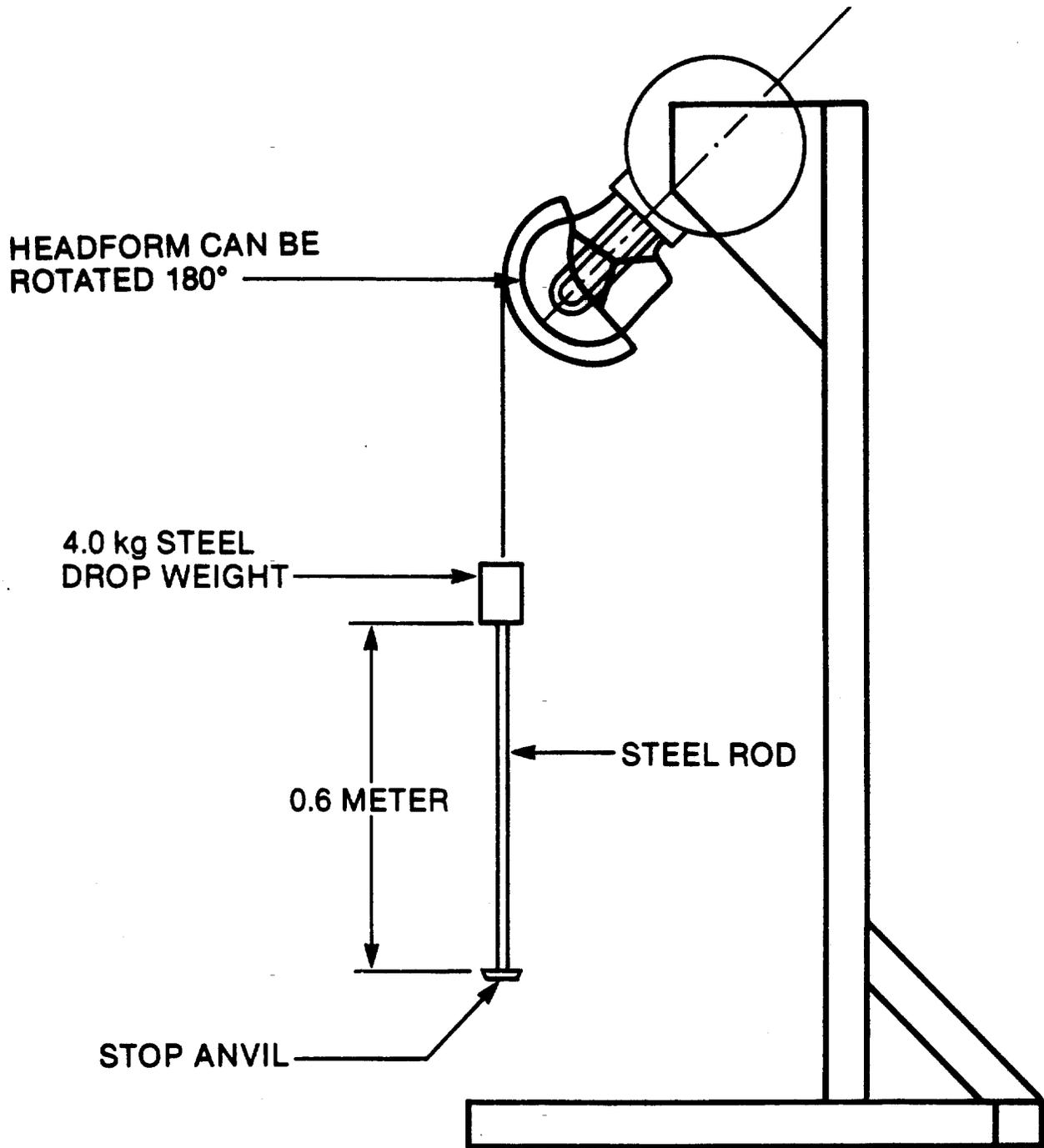


Figure 7. Typical Test Apparatus for Positional Stability Test

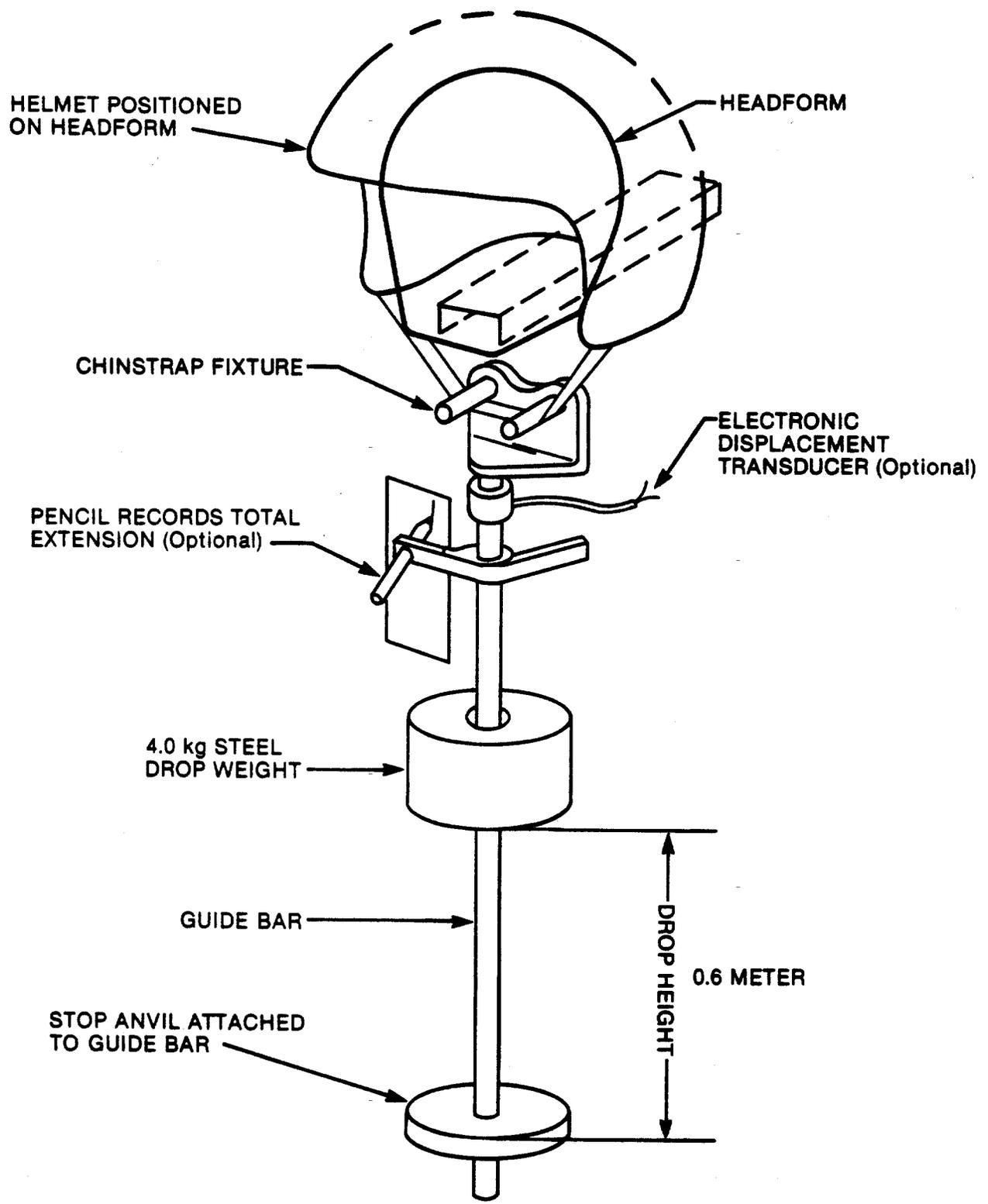


Figure 8. Apparatus for Test of Retention System Strength and Extention

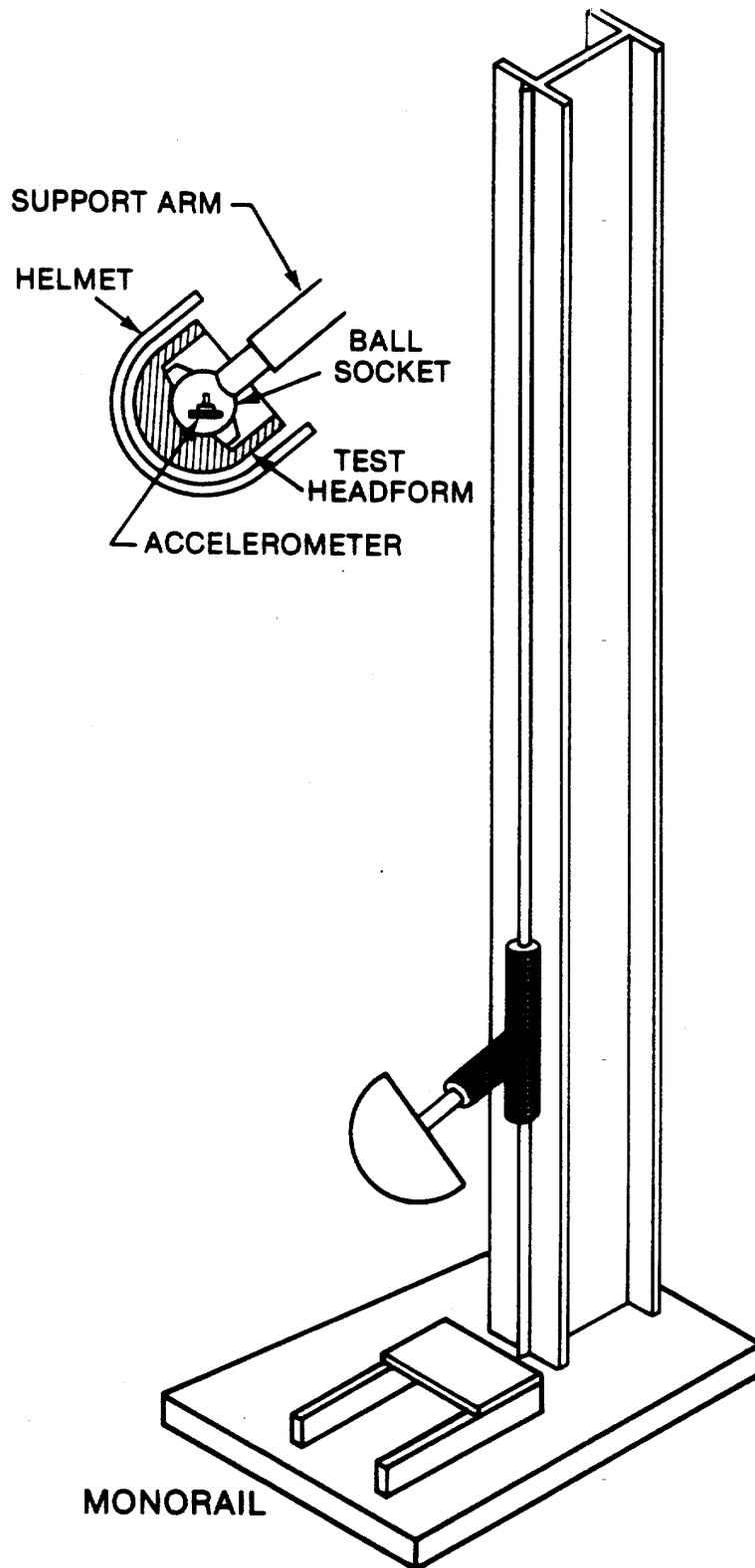


Figure 9. Impact Test Apparatus

Overhead View of Ball-Arm as Installed on Impact Test Apparatus

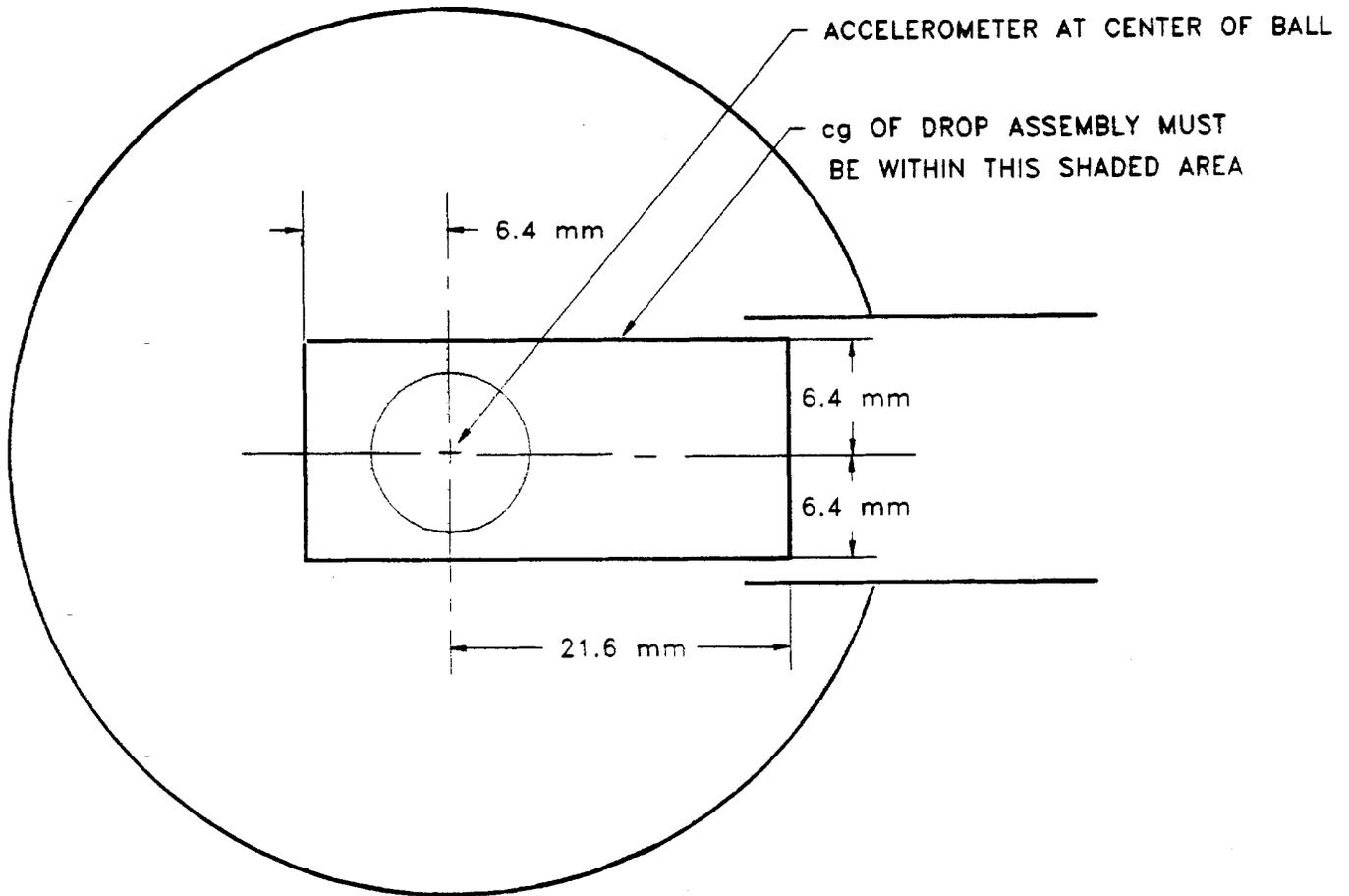


Figure 10. Center of Gravity for Drop Assembly

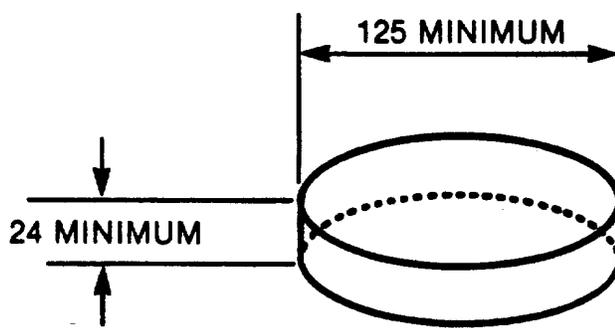


Figure 11. Flat Anvil

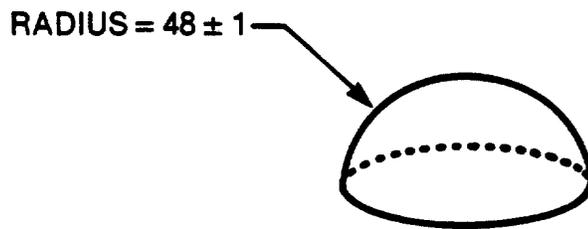


Figure 12. Hemispherical Anvil

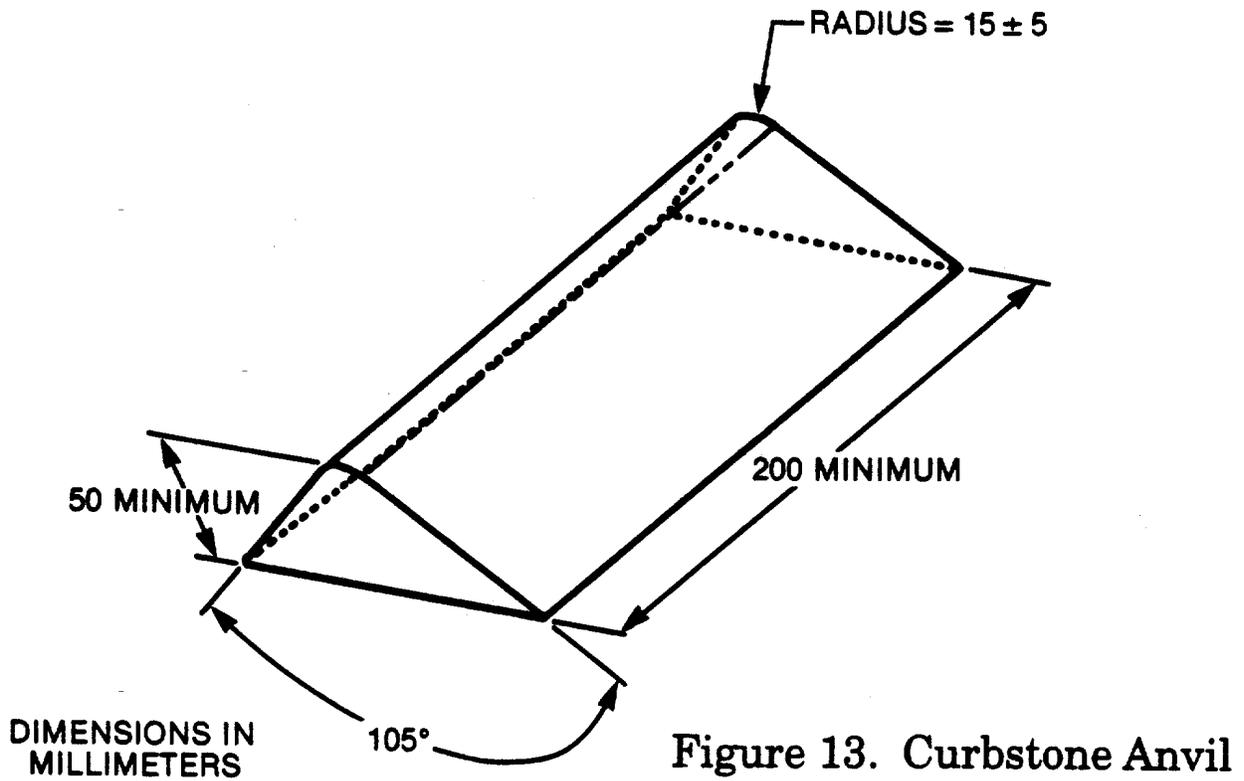


Figure 13. Curbstone Anvil

DIMENSIONS IN
MILLIMETERS

Dated: November 13, 1995.

Sadye E. Dunn,

*Secretary, Consumer Product Safety
Commission.*

[FR Doc. 95-28761 Filed 12-5-95; 8:45am]

BILLING CODE 6355-01-C

Federal Register

Wednesday
December 6, 1995

Part IV

**Department of
Housing and Urban
Development**

Office of the Assistant Secretary for
Community Planning and Development

**Requests for Proposals and Program
Guidelines for Assumption of Grant
Responsibilities Under the Innovative
Homeless Initiatives Demonstration
Program—Correction; Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Community Planning and
Development**

[Docket No. FR 3991-N-02]

**Request for Proposals (RFP) and
Program Guidelines for Assumption of
Grant Responsibilities Under the
Innovative Homeless Initiatives
Demonstration Program—Correction**

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice: Request for proposals (RFP) and program guidelines for assumption of grant responsibilities under the Innovative Homeless Initiatives Demonstration Program; Correction.

SUMMARY: On November 27, 1995 (60 FR 58370), HUD published in the Federal Register a Request for Proposals (RFP) which solicits proposals to assume the obligations of the Recipient under Innovative Demonstration Program Project No. NY36194-0628, a funded project in New York City designed to serve homeless persons in the Midtown area, in particular the many homeless persons who reside in or near Grand Central Station. In that notice, HUD used the word assignment, but the correct term is assumption. The purpose of this notice is to reprint the notice, using the correct term—assumption. This notice does not alter the dates set forth in the November 27, 1995 notice.

DATES: The due date remains December 18, 1995, as set forth in the notice published in the Federal Register on November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Kate Brennan, Office of Community Planning and Development, 451 Seventh Street SW., Washington, DC 20410-7000, telephone (202) 708-1234 (voice) or (202) 708-2565 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

A. Introduction

This Request for Proposals (RFP) solicits proposals to assume the obligations of the Recipient under Innovative Demonstration Program Project No. NY36194-0628, a funded project in New York City designed to serve homeless persons in the Midtown area, in particular the many homeless persons who reside in or near Grand Central Station. The specific responsibilities under the grant are summarized in section C "Scope of

Work." The term shall be the term remaining from the original two year grant, which as of the date of publication is approximately 12 months.

The additional sections of this RFP are:

- B. Funding.
- C. Scope of Work.
- D. Proposal Contents.
- E. Evaluation Factors.
- F. Contract Award.

Note: An original and one copy of the proposal are due no later than December 18, 1995, at the following address: Department of Housing and Urban Development, Community Planning and Development Division, 26 Federal Plaza, New York, New York, 10278-0068, Attention: Joseph D'Agosta, Director. Proposals may not be sent by facsimile.

B. Funding

Funding will be approximately \$480,000, which represents the remaining amount awarded under Project Number NY36194-0628.

C. Scope of Work

The selected proposal will operate a private shelter bed initiative and a start up loan program as described in the original application, Project Number NY36194-0628. The activities include: (1) Developing transitional housing programs in cooperation with churches and synagogues in the metropolitan New York city area, in particular in the area of Grand Central Station, that are interested in helping move homeless persons to independent living, but that may lack the capacity or funding to undertake this; and (2) a "loan" program to provide funds to homeless persons residing in this same area, to assist in their permanent housing search. The loans could be used for such things as security deposits and first month's rent and be paid back in cash or through volunteer work in the organization's homeless facility.

Copies of the original application and grant agreement are available from the Community Planning and Development Division of the HUD New York Field Office on (212) 264-2885. Written requests may be addressed to the attention of Joseph D'Agosta, Director, Community Planning and Development Division, US Department of Housing and Urban Development, 26 Federal Plaza, New York, NY, 10278-0068.

The proposal selected under this RFP will be subject to the HUD Demonstration Act of 1993 (Pub. L. 103-120, signed on October 27, 1993) and the Notice of Fund Availability (NOFA) published December 21, 1993 in the Federal Register, which governed the original competition. Copies of both will

also be available from the Field Office for review.

D. Proposal Contents

The proposal must be submitted by a state, metropolitan city, urban county, unit of general local government, Indian tribe or a nonprofit organization, as defined in section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302). Each proposal must include all information requested in this section. A newly-formed organization may substitute a description of the experience and knowledge of its principal officers and employees where a description of its own experience is requested below.

The following are required contents of a written proposal to be submitted no later than December 18, 1995 (21 days after publication of the November 27, 1995 notice in the Federal Register):

I. Description of experience. Submit a narrative description of experience in assisting homeless persons and in running programs similar to those proposed in the application. Also include a description of the qualifications of key staff who will be carrying out the program and a description of staff organization.

II. Proof of Eligibility. If the proposal is from a nonprofit it must contain either documentation showing that the applicant is a certified United Way member agency; or a copy of their IRS ruling providing tax-exempt status under Section 501(c)(3) of the IRS Code of 1986, as amended.

III. Project description. Submit a narrative description of the organization's specific plan for carrying out the proposed activities. Include specific designs for (1) enlisting churches and synagogues in the development of transitional housing and the type of assistance your organization will provide to them in the development of such housing, and (2) developing a loan program that meets the needs of homeless persons seeking permanent housing. The project described should be based as closely as possible on the original application.

IV. Certifications. Submit the certifications printed here as Appendix A to this RFP. The document may be removed or photocopied (do not re-type), and must be signed by the official authorized to act on behalf of the applicant.

E. Evaluation Factors

A proposal will be selected based on the extent to which it demonstrates in the written submission the capacity to implement a program that achieves the purpose of this RFP including the speed

with which the project and activities will become operational.

The following are the factors for evaluation which will receive equal consideration in the selection process:

(1) *Capacity of the organization.* The extent to which the organization demonstrates that it, or its subcontractors, has the capacity to carry out the proposed activities based on (a) the past experience of the organization in the proposed activities; and (b) the qualifications of key staff.

(2) *Timeliness.* The extent to which the organization demonstrates that the proposed activities will begin in a timely manner and will be carried out efficiently and expeditiously.

(3) *Relevance of project activities.* (a) The extent to which the proposed project mirrors the activities as described in the original application; and (b) the overall quality of the project.

F. Contract Award

Award will be made to the proposal which HUD determines is most responsive to the evaluation factors above. HUD reserves the right to reject all proposals.

Dated: November 27, 1995.

Jacquie Lawing,

Deputy Assistant Secretary for Economic Development.

Appendix A—Applicant Certifications

The Applicant hereby assures and certifies that:

1. It will comply with:

a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and regulations pursuant thereto (Title 24 CFR part I), which state that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance, and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structure(s) thereon which are provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer, the transferee, for the period during which the real property and structure(s) are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

b. The Fair Housing Act (42 U.S.C. 3601–19) and the implementing regulations at 24 CFR part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing. For Indian tribes, it will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*),

instead of Title VI and the Fair Housing Act and their implementing regulations.

c. Executive Order 11063 on Equal Opportunity in Housing, as amended by Executive Order 12259 (3 CFR 1958–1963 Comp. p. 652 and 3 CFR, 1980 Comp. 307) and the implementing regulations at 24 CFR part 107 which prohibit discrimination because of race, color, creed, sex or national origin in housing and related facilities provided with Federal financial assistance.

d. Executive Order 11246 on Equal Opportunity in Employment (3 CFR 1964–1965, Comp., p. 339) and the implementing regulations at 41 CFR part 61, which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity. The applicant will incorporate, or cause to be incorporated, into any contract for construction work as defined in Section 130.5 of HUD regulations the equal opportunity clause required by Section 130.15(b) of the HUD regulations.

e. Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701(u)), and the implementing regulations at 24 CFR part 135), which require that to the greatest extent feasible, employment, training and contract opportunities arising in connection with the expenditure of HUD assistance covered by section 3 be given to the low-income persons and the business concerns identified in the part 135 regulations.

f. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and the implementing regulations at 24 CFR part 8, which prohibit discrimination based on handicap in Federally-assisted and conducted programs and activities.

g. The Age Discrimination Act of 1975 (42 U.S.C. 6101–07), as amended, and the implementing regulations at 24 CFR part 146, which prohibit discrimination because of age in projects and activities receiving Federal financial assistance.

h. Executive Orders 11625, 12432, and 12138, which state that program participants shall take affirmative action to encourage participation by businesses owned and operated by members of minority groups and women.

If persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for assistance are unlikely to be reached, it will establish additional procedures to ensure that interested persons can obtain information concerning the assistance.

i. The reasonable modification and accommodation requirements of the Fair Housing Act and, as appropriate, the accessibility requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, as amended.

2. It will provide drug-free workplaces in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701) by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the

grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b. Establishing an ongoing drug-free awareness program to inform employees about—

(1) the dangers of drug abuse in the workplace;

(2) the grantee's policy of maintaining a drug-free workplace;

(3) any available drug counseling, rehabilitation, and employee assistance programs; and

(4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a;

d. Notifying the employee in the statement required by paragraph a that, as a condition of employment under the grant, the employee will—

(1) abide by the terms of the statement; and

(2) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d(2), with respect to any employee who is so convicted—

(1) taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a, b, c, d, e and f;

h. Providing the street address, city, county, state, and zip code for the site or sites where the performance of work in connection with the grant will take place. For some applicants who have functions carried out by employees in several departments or offices, more than one location may need to be specified. It is further recognized that States and other applicants who become grantees may add or change sites as a result of changes to program activities during the course of grant-funded activities. Grantees, in such cases, are required to advise the HUD Field Office by submitting a revised "Place of

Performance" form. The period covered by the certification extends until all funds under the specific grant have been expended.

3. It will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations at 49 CFR part 24.

4. It will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821-4846, and implementing regulations at 24 CFR part 35.

5. It will (i) not enter into a contract for, or otherwise commit HUD or local funds for, acquisition, rehabilitation, conversion, lease, repair, or construction of property to provide housing under the program, prior to HUD's completion of an environmental review in accordance with 24 CFR part 50 and HUD's approval of the application; (ii) supply HUD with information necessary for HUD to perform any applicable environmental review when requested; and (iii) carry out mitigating measures required by HUD or ensure that alternate sites are utilized.

6. The applicant certifies that:

a. No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any

Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and of not more than \$100,000 for each such failure.

7. For private nonprofit applicants, the applicant certifies that members of its Board of Directors serve in a voluntary capacity and receive no compensation, other than reimbursement for expenses, for their services.

8. The applicant certifies that it and its principals (see 24 CFR 24.105(p)):

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions (see 24 CFR 24.110) by any Federal department or agency;

b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in (b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the applicant is unable to certify to any of the statements in this certification, the applicant shall attach an explanation behind this page.

Signature of Authorized Certifying Official:

Title:

Applicant:

Date:

[FR Doc. 95-29608 Filed 12-5-95; 8:45 am]

BILLING CODE 4210-29-P

Federal Register

Wednesday
December 6, 1995

Part V

Department of Labor
Employment and Training Administration
Department of Education
Office of Vocational and Adult Education

**Proposed Priority for School-to-Work
Urban/Rural Opportunities Grants for
Fiscal Year 1995; Notice**

DEPARTMENT OF LABOR**Employment and Training
Administration****DEPARTMENT OF EDUCATION****Office of Vocational and Adult
Education**

ACTION: Notice of Proposed Priority for School-to-Work Urban/Rural Opportunities Grants for Fiscal Year (FY) 1995.

SUMMARY: The Secretaries of Education and Labor (the Secretaries) propose a priority for FY 1995 under the Urban/Rural Opportunities Grants authorized by Title III of the School-to-Work Opportunities Act of 1994 (the Act). The Secretaries intend to use this priority, along with the selection criteria published in the November 14, 1995, issue of the Federal Register, to select applications for funding under the FY 1995 Urban/Rural Opportunities Grants competition. The Secretaries propose to take this action to focus Federal financial assistance on implementing School-to-Work Opportunities initiatives in urban or rural areas of high poverty. This proposed priority provides for a preference to be given to applications from local partnerships proposing to implement a School-to-Work Opportunities initiative for youth residing in or attending school in an Empowerment Zone or Enterprise Community (EZ/EC) designated under section 1391 of the Internal Revenue Code (IRC), as amended by Title XIII of the Omnibus Budget Reconciliation Act of 1993.

Note: This notice is an invitation for comment upon the proposed priority as described; it is not a solicitation for applications for Urban/Rural Opportunities Grants.

DATES: Comments must be received on or before January 5, 1996.

ADDRESSES: Comments should be addressed to Karen Clark, National School-to-Work Office, 400 Virginia Avenue, SW, Room 210, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Karen Clark, National School-to-Work Office, Telephone: (202) 401-6222 (this is not a toll-free number). 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 A. Background*

The Secretaries intend to award grants to local partnerships to implement School-to-Work Opportunities initiatives serving youth residing or attending school in urban or rural high poverty areas, as discussed in the solicitation for grant applications published in the November 14, 1995, issue of the Federal Register. As discussed in the solicitation on pages 57276-57282, the Secretaries recognize the particular challenges faced by local partnerships serving youth in urban and rural high poverty areas in preparing them for first jobs in high-skill, high-wage careers and in increasing their opportunities for further education and training. Similarly, the Empowerment Zone and Enterprise Community (EZ/EC) initiative is aimed at rebuilding communities in America's poverty-stricken inner cities and rural heartlands. Under the EZ/EC initiative, the Federal Government has designated certain geographic areas as EZs and as ECs in accordance with Internal Revenue Code (IRC) section 1391, as amended by Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66). The selected areas were designated as EZs or ECs based on the quality of their strategic plans addressing how each zone or community would link economic development with education and training, as well as how community development, public safety, human services, and environmental initiatives together would support sustainable communities.

The Secretaries view Urban/Rural Opportunities Grants as well suited for inclusion in a comprehensive approach to economic and community development that addresses the special challenges facing youth in high poverty areas in making the transition from school to work or further education and training. By improving the quality of education and training provided to high poverty area youth, School-to-Work Opportunities initiatives enhance the economic opportunities of such youth and contribute to the improvement of impoverished communities. Communities designated as EZs or ECs have already demonstrated a capacity for the type of collaboration and cooperative planning that is critical to developing and implementing successful School-to-Work Opportunities initiatives.

Interested individuals may contact the Department of Housing and Urban Development (HUD) at 1-800-998-9999 for additional information on the urban

EZ/EC initiative and the Department of Agriculture (USDA) at 1-800-645-4712 for additional information on the rural EZ/EC initiative. A listing of areas that have been selected as EZs or ECs is included in an appendix to this notice.

Section B. Priority

In addition to the priority in section 302(b)(3) of the School-to-Work Opportunities Act, the Secretaries propose to give competitive preference to applications from partnerships that propose to implement a School-to-Work Opportunities initiative serving youth who reside or attend school in an area designated as an EZ or an EC. The Secretaries would select an application for an Urban/Rural Opportunities Grant that meets this priority over an application of comparable merit that does not meet the priority.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed competitive preference. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, at the National School-to-Work Office, 400 Virginia Avenue, SW., Room 210, Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday of each week, except Federal holidays.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 as implemented in 34 CFR Part 79 and 29 CFR Part 17. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Departments' specific plans and actions for this program.

Program Authority: 20 U.S.C. 6101. (Catalog of Federal Domestic Assistance Number 278D: School-to-Work Opportunities: Urban/Rural Opportunities Grants)

Dated: November 27, 1995.

Timothy M. Barnicle,

Assistant Secretary for Employment and Training, Department of Labor.

Patricia McNeil,

Assistant Secretary for Vocational and Adult Education, Department of Education.

Appendix—Empowerment Zones and Enterprise Communities

Empowerment Zones (EZ)

Georgia: Atlanta

Illinois: Chicago

Kentucky: Kentucky Highlands*

Maryland: Baltimore

Michigan: Detroit

Mississippi: Mid Delta*

New York: Harlem, Bronx

Pennsylvania/New Jersey: Philadelphia, Camden

Texas: Rio Grande Valley*

Supplemental Empowerment Zones (SEZ)

California: Los Angeles

Ohio: Cleveland

Enterprise Communities (EC)

Alabama: Birmingham

Alabama: Chambers County*

Alabama: Greene, Sumter Counties*

Arizona: Phoenix

Arizona: Arizona Border*

Arkansas: East Central*

Arkansas: Mississippi County*

Arkansas: Pulaski County

California: Imperial County*

California: Los Angeles, Huntington Park

California: San Diego

California: San Francisco, Bayview, Hunter's Point

California: Watsonville*

Colorado: Denver

Connecticut: Bridgeport

Connecticut: New Haven

Delaware: Wilmington

District of Columbia: Washington

Florida: Jackson County*

Florida: Tampa

Florida: Miami, Dade County

Georgia: Albany

Georgia: Central Savannah*

Georgia: Crisp, Dooley Counties*

Illinois: East St. Louis

Illinois: Springfield

Indiana: Indianapolis

Iowa: Des Moines

Kentucky: Louisville

Louisiana: Northeast Delta*

Louisiana: Macon Ridge*

Louisiana: New Orleans

Louisiana: Ouachita Parish

Massachusetts: Lowell

Massachusetts: Springfield

Michigan: Five Cap*

Michigan: Flint

Michigan: Muskegon

Minnesota: Minneapolis

Minnesota: St. Paul

Mississippi: Jackson

Mississippi: North Delta*

Missouri: East Prairie*

Missouri: St. Louis

Nebraska: Omaha

Nevada: Clarke County, Las Vegas

New Hampshire: Manchester

New Jersey: Newark

New Mexico: Albuquerque

New Mexico: Moro, Rico Arriba, Taos Counties*

New York: Albany, Schenectady, Troy

New York: Buffalo

New York: Newburgh, Kingston

New York: Rochester

North Carolina: Charlotte

North Carolina: Halifax, Edgecombe,

Wilson Counties*

North Carolina: Robeson County*

Ohio: Akron

Ohio: Columbus

Ohio: Greater Portsmouth*

Oklahoma: Choctaw, McCurtain Counties*

Oklahoma: Oklahoma City

Oregon: Josephine*

Oregon: Portland

Pennsylvania: Harrisburg

Pennsylvania: Lock Haven*

Pennsylvania: Pittsburgh

Rhode Island: Providence

South Carolina: Charleston

South Carolina: Williamsburg County*

South Dakota: Beadle, Spink Counties*

Tennessee: Fayette, Haywood Counties*

Tennessee: Memphis

Tennessee: Nashville

Tennessee/Kentucky: Scott, McCreary Counties*

Texas: Dallas

Texas: El Paso

Texas: San Antonio

Texas: Waco

Utah: Ogden

Vermont: Burlington

Virginia: Accomack*

Virginia: Norfolk

Washington: Lower Yakima*

Washington: Seattle

Washington: Tacoma

West Virginia: West Central*

West Virginia: Huntington

West Virginia: McDowell*

Wisconsin: Milwaukee

*denotes rural designee

Enhanced Enterprise Communities (EEC)

California: Oakland

Massachusetts: Boston

Missouri/Kansas: Kansas City, Kansas City

Texas: Houston

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- Construction of telephone facilities financed with RUS loan funds; rescission of obsolete guidance bulletins; published 11-6-95

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EDUCATION DEPARTMENT

Bilingual education: Graduate fellowship program; comments due by 12-11-95; published 11-9-95

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Clean Air Act: State operating permits programs-- Puerto Rico; comments due by 12-14-95; published 11-14-95

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities; exemptions:

- 1,2-ethanediamine, polymer with oxirane and methyloxirane; comments due by 12-15-95; published 11-15-95

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities: 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole (propiconazole); comments due by 12-15-95; published 11-15-95

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Public mobile services-- Enhanced 911 services compatibility with wireless services; comments due by 12-15-95; published 11-28-95

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives: Adhesive coatings and components-- Silver chloride-coated titanium dioxide; comments due by 12-15-95; published 11-15-95

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species: Bruneau hot springsnail Comment period extension; comments due by 12-15-95; published 11-13-95

JUSTICE DEPARTMENT

Executive Office for Immigration Review: Representation and appearance, nominal fees requirement; and free legal services lists; comments due by 12-14-95; published 11-14-95

LABOR DEPARTMENT

Mine Safety and Health Administration

Metal and nonmetal mine safety and health: First aid safety standards; comments due by 12-11-95; published 10-27-95

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act; implementation; comments due by 12-15-95; published 11-15-95

PERSONNEL MANAGEMENT OFFICE

Prevailing rate systems; comments due by 12-14-95; published 11-14-95

SECURITIES AND EXCHANGE COMMISSION

Securities: Ownership reports and trading by officers, directors, and principal security holders (insider trading) Correction; comments due by 12-15-95; published 10-26-95

STATE DEPARTMENT

Visas; immigrant documentation:

Diversity immigrant visa program; requirements to prevent fraudulent practices; comments due by 12-13-95; published 11-13-95

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Class C airspace; comments due by 12-15-95; published 11-1-95

Class E airspace; comments due by 12-11-95; published 11-1-95

TREASURY DEPARTMENT**Fiscal Service**

Financial management services:

Federal process agents of surety companies; comments due by 12-11-95; published 11-9-95

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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